JUDICIAL SOLUTIONS FOR TEMPLE DISPUTES

-A CRITICAL ANALYSIS

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M.A.,B.L,Ph.D.

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அணிந்துரை

அன்பர்களே! ஆத்திகப் பெருமக்களே! விசேடமாக வைணவச்சான்றோர்களே! உங்களனைவர்க்கும் முதற்கண் நமது மனம் நிறைந்த மங்களாசாஸனங்களைத் தெரிவித்துக் கொண்டு சில முக்கியமான வார்த்தைகள் கூற முற்படுகின்றோம் யாம்.

வழக்கறிஞர் முனைவர் ஸ்ரீமான் டி.எஸ். ராமஸ்வாமி அவர்கள் நாம் நன்கு அறிந்து பழகிய சிறந்த பண்பாளர். மிக நல்ல வைணவக்குடியில் பிறக்கும் பாக்யம் பெற்று இச்சீரிய பிறப்பிற்கேற்ற குணநலன்கள் குடி கொண்ட உள்ளத்தினராய் விளங்காநிற்கும் பெரியவர். தமது பழுத்த அறிவின் முதிர்ச்சியைப் பயன்படுத்தி, வெகு அருமையான உபயோகம் மிக்கவோர் 'ஆராய்ச்சி'யினைப் புரிந்து ஸமர்ப்பித்து சென்னைப் பல்கலைக்கழகத்திலிருந்து

அண்மையில் 'டாக்டர்' (முனைவர்) பட்டம் பெற்று விளங்காநிற்கும் பெரியவர். இப்பெரியவர் பட்டம் பெற எடுத்துக் கொண்ட விஷயம் சாதாரணமானதல்ல, அபூர்வமானதொன்று. "திருக்கோவில் வழக்குக்களில் நீதித்துறைத் தீர்வுகள் – ஒரு விமர்சன அலசல்" (Judicial Solutions for Temple disputes - A critical analysis) என்றவொரு அருமையான ஆராய்ச்சியைச் செய்யப்புக்கு எட்டுப் பகுதிகளாக – அத்தியாயங்களாக வகுத்துக் கொண்டு,

மிக்க பயனுள்ள பாங்கினில் எழுதி ஸமர்ப்பித்து முனைவர் பட்டமும் பெற்றுள்ளார். அத்தியாயங்களை முறைபட வகுத்துக் கொண்டிருக்கும் விதமும், பற்பல காலங்களில் பற்பல ஸந்தர்ப்பங்களில் தொடரப்பட்ட பல வகை தென்கலை–வடகலை வழக்குக்களில் விவரங்களையுணர்த்தி, நீதிமன்றங்களில் சிறந்த நீதிபதிகளின் தீர்ப்புக்கள் அமைந்த தன்மையும் தெள்ளத் தெளிவாக எடுத்துக் காட்டி தொகுக்கப்பட்டுள்ள திறமையும் பாராட்டுக்குரியவை. இந்த வடகலை–தென்கலை வழக்குகள் பல திருக்கோவில்கள் ஸம்பந்தமாக நடந்திருப்பினும், பிரஸித்தமாகவும், அதிகமாகவும், 'பெருமாள் கோவில்' எனப் போற்றப்படும் ஸ்ரீகாஞ்சீபுரம் ஸ்ரீதேவராஜன் வரதப்பிரபுவின் திருக்கோவில் ஸம்பந்தமாய் நிகழ்ந்துள்ளபடியால் முக்கிய உதாரணங்களான அத்தகைய வழக்குகளை எடுத்துரைத்து, அவற்றில் நீதிபதிகள் வழங்கியுள்ள தீர்ப்புக்களையும் எடுத்தளித்துள்ளார்.

ஆராய்ச்சி நூலினுள் நம்மை இட்டுச் செல்லும் ஸ்ரீமான் டி.எஸ்.ஆர் அவர்களது 'முகவுரை' வெகு சிறப்பாக அமைந்துள்ளது. ரிலிஜன் எனப்படும் மதங்கள் பற்றிய இலக்கண விளக்கங்களை விவேகானந்தர் முதலிய நம் பாரத புண்ணிய பூமியின் தவப்புதல்வர்களது வாக்குகளைக் கொண்டு எடுத்துக் காண்பித்து நூலாசிரியர் தந்துள்ளார். மிக்க பரந்த மனப்பான்மை கொண்ட நம் பூர்வாசார்யகளது கருத்துக்களையும் எடுத்துரைத்து, தமது விசாலமான செம்மனத்தையும் திறந்து காட்டியுள்ளமையும் அருமையாக அமைந்துள்ளது. இதன் முழு பிரதிபலிப்பினை நாம் ஸ்ரீமான் டி.எஸ்.ஆர் இன் 'முடிவுரை'ப்பகுதியிலும் சிறப்பான முறையில் காண இயல்கின்றது. நீதிபதிகளது பொருத்தமான பல தீர்வுகள் அசைக்க முடியாத அடிப்படை ஆதாரங்களினால் தான் வழங்கப்பபட்டுள்ளமை தெள்ளத் தெளிவாக விளங்குகின்றது. இந்த அருமையான தீர்வுகள் பற்பல ஆண்டுகட்கு முன்னர் வழங்கப்பட்டவையாயினும் முன்பு போன்றே இக்காலத்திற்கும் பொருந்தியுள்ளன என்பதையும், எக்காலங்களிலும் பொருந்தும் (Ever valid) என்பதையும் நம்மை உணரச் செய்கின்றார்.

அன்பர்களே! ஓரம் சாராமல் – அதாவது – பக்ஷபாத உணர்வுகளை உதறித்தள்ளிவிட்டு நடுநிலை கொண்ட மனத்தினராய் நாம் பார்த்தோமெனின், இந்த Disputes (தகராறுகள்) தேவையற்ற முறையில் தோன்றி ஒருபடியாகவே பழங்காலத்தில் திகழாநின்ற நமது ஒப்பிலா வைணவ சமயத்துக்கு ஊறு தான் விளைத்துள்ளன; ஒற்றுமையைக் குலைத்துள்ளன என்பதையே நாம் அனைவரும் அறிய முடியும். நம் பூர்வாசார்ய மஹாநுபாவர்களிடையே சில கருத்து வேறுபாடுகள் இருந்துள்ளன – அதாவது – conceptual differences. அவற்றை நாம் நம்மிடையே வேற்றுமை மனப்பான்மையை வளர்த்துக் கொள்ளக் கூடாது. வேண்டாத பான்மையில் இது காறும் வளர்ந்து விட்ட வேற்றுமையுணர்வினையும், சண்டை சச்சரவுகளையும் நாம் களைந்து, ஒன்று பட்டு வாழ முற்பட வேணும் என்ற உயர்ந்த கருத்தே ஸ்ரீமன் டி.எஸ்.ஆர் அவர்களால் இவ்வாராய்ச்சி நூல்வாயிலாக புலப்படுத்தப்பட்டுள்ளது. வளர்ந்து விட்ட பேத மனப்பான்மையைக் கை விட்டு Unity in diversity (வேற்றுமையில் ஒற்றுமை) என்ற நன்மைதரும் கருத்தினை நாம் மனதினில் நிலை நிறுத்திக் கொள்ள வேணும் என்ற உயரிய எண்ணத்துடன் தான் இப்படியொரு ஆராய்ச்சி நூலை எழுதி ஸமர்ப்பித்து, அதற்குரிய உயர்ந்த 'முனைவர்' பட்டத்தையும் பெற்றிலங்குகின்றார் பெரியவர். பேத புத்தியின் தூண்டுதலால், நமக்குரியனவல்லாத ஆக்கிரமிப்புக்களைச் செய்யும் முயற்சிகளை மேற்கொள்ளாமல் நாம் திருந்திடவேணும். நம்மி ராமாநுசனும், அவரது அபராவதாரராய்ப் போற்றப்படும் மணவாளமாமுனியும், ஸ்வாமிதேசிகனும், இவர்களது அடிச்சுவட்டை நிர்மலமான பாங்கினிலே பின்பற்றி விளங்கிய விசால மனஸ்கர்களான பற்பல பூருவாசாரியாகளும் நமக்கு போதித்துள்ளவற்றை மதித்துப் போற்றி நாம் வாழ்ந்தால் – "அதினின் மிக்கோர் மகிழ்வுண்டோ' என்று நாம் இப்போது வற்புறுத்திக் கூறுகின்றோம்.

இப்படியொரு ஆராய்ச்சி நூலினை ஸ்ரீமான் டி.ஏஸ்.ஆர் ஸ்வாமி ஒரு அழகிய புத்தக வடிவில் வெளியிடப் போகின்றார்.

ஒற்றுமை ஓங்கச் செய்ய வேணும் என்ற மிக நல்ல எண்ணங்கொண்டே சிலவாண்டுகட்கு முன் ''யதிஸம் மேளனம்'' நடத்துவித்த இப்பெரியவரது இம்முயற்சிக்கு தக்க நற்பயன் விளைந்திடுவது திண்ணம் என நினைக்கும் நாம், இப்பெரியவர் ஸகுடும்பராக நீடு இனிது இந்நிலவுகலகில் வாழ்ந்து, இது போன்ற மேலும் பல பேருபகாரங்கள் புரிந்திட மனமார வாழ்த்துகிறோம்; மங்களாசாஸனம் செய்து மகிழ்கின்றோம். சுபம்.

கன்யா புனர்வஸூ உத்ஸவம் –
மூன்றாம் நன்னாள்
வானமாமலை.
14. 9.03 .

ஸ்ரீராமாநுசன்
(ஸ்ரீ கலியன் வானமாமலை ராமாநுஜ ஜீயர்)

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FOREWORD

I had the opportunity of going through the book which was the thesis submitted to the University of Madras by Thiru T.S. Ramaswamy, Research Scholar for the Award of the Degree of Doctor of Philosophy in Vaishnavism.

Dr. T.S. Ramaswamy, a practitioner in Law, is deeply involved in Vaishnavism. In the Department of Vaishnavism, he joined as a research Scholar and submitted this thesis entitled as "Judicial Solutions for Temple Disputes, A Critical Analysis". The Department of Vaishnavism in the University of Madras is flourishing very well and had attracted various students, both in the regular study and for the research course. This shows the involvement of the Professors, who are handling this department effectively and efficiently.

I feel proud that I was instrumental in starting the Department of Vaishnavism, alongwith various other Departments, such as Saivism, Jainism, Christianity, Annaism etc., I was able to do the same while I was the Chairman of the 125th year celebrations of the University of Madras. Among them, the Department of Vaishnavism and Jainism are picking up and other Departments such as Saivism etc., are slowly coming up in the academic sphere.

It is interesting to go through the critical analysis made by Dr. T.S. Ramaswamy, referring to various judicial decisions of our High Court and Supreme Court in resolving the disputes among Vaishnavites, more especially in the matter of Vadagalai and

Thengalai disputes. In this book. Thiru T.S. Ramaswamy, in a philosophical way. has stated that when the money accumulates. man decays. He has also stated that it is the heart which experiences God and not the reason. He asserts that each soul is potentially divine, the goal is to manifest this divinity within by controlling nature, external and internal.

The view of Thiru T.S. Ramaswamy is a broad minded one. He states that Doctrines or dogmas or rituals or books or temples or forms are but secondary details. Correctly he states that our great Ramanujar, Tamilnadu has produced, was the first saint to implement social justice in the field of religion and philosophy. With full of respect for the two great scholars, Pillailokacharya and Vedanta Desika, Thiru T.S. Ramaswamy states that their disciples are responsible for the vertical split forming Thengalai and Vadagalai.

In this book, I find that Thiru T.S. Ramaswamy, with full grasp of the Supreme Court Judgments lucidly interprets Articles 25 and 26 of the Constitution.

After interpreting the decisions of both our High Court and the Supreme Court, Thiru T.S. Ramaswamy has stated that custom must be ancient, certain and reasonable and such customs have been upheld by the courts, irrespective of the existing laws. He has catalogued the following enactments, which have superceded the Hindu Law such as

(1) Caste Disabilities Removal Act XXI of 1856

(2) Hindu Widow Remarriage Act XV of 185

(3) Special Marriage Act 43 of 1954

(4) Madras (Tamilnadu) Temple Entry Authorisation Act 1947 (Tamilnadu Act V of 1947)

Social reforms, according to Thiru T.S. Ramaswamy, is eradication of practices or dogmas, which stand in the way of the Country's progress as a whole.

Asserting that the Supreme Court has divided the religion as integral and non-integral parts. Thiru T.S. Ramaswamy has stated that integral part relates to religious custom, religious usage and religious practice. Non-integral part relates to secular part associated with religious practice.

Summarizing the various Supreme Court decisions, the Author has clearly stated:

(1) Religious custom, usage and practice should be kept in tact and court should not interfere in such things;

(2) The constitution of India only restates and reiterates the existing law in different language and gives full freedom for the practice of religion by all;

(3) But the Constitution of India also recognises exceptions and limits of the freedom to practice religion;

(4) The State can make law and has, in fact, made law altering even some of the customs and practices in the larger interest of the society and for enforcing social reform and this would not amount to interference in purely religious custom etc.

(5) Appointment of Archakas and other office holders, their emoluments etc., are all secular part of religion and can be controlled by legislation.

After stating so, Thiru T.S. Ramaswamy in this book, referring to Article 25(1)(b) of the Constitution of India, categorically states that whenever there is conflict between religious practice and need for social reform, religion must yield.

Thus, this book written by Thiru T.S. Ramaswamy, a scholar in Vaishnavite philosophy, really helps to cement the differences between Vadagalai and Thengalai sects and tries to project the real Vaishnavism, which is universal in character. The Author has specifically stated that as on date Sri Vaishnavites of the two sects,

at any rate, the overwhelming majority of them, have realised the folly of futile disputes and have come closer together even having inter marital relationships.

I am fully impressed by the way in which the Author has attempted this thesis, which, in my opinion, will have a very good impact in reforming the society and also making the people to understand the real philosophy of Vaishnavism preached by Alwars and our great Ramanujar.

I recommend to the enlightened public to read through the pages of this book and make use of it in propagating the universal philosophy of Vaishnavism in this world.

I congratulate Thiru T.S. Ramaswamy for the innovative book he has written, with particular reference to our High Court and Supreme Court decisions.

Justice P.R. GOKULAKRISHNAN,

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FOREWORD

This book purports to investigate and find out the validity of some of the earlier temple disputes and the judicial decisions thereon, in the context of our Constitutional provisions relating to religious freedom, in terms of certain rites and practices to be followed in Vaishnava temples and comes to the conclusion that the judicial solutions in respect of some Vaishnava temples, chiefly Sri Devarajaswami temple in Chinna Kancheepuram, are unassailably valid and relevant even today.

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author is original in the sense, his own insight and nobility of mind are brought to bear upon the discussion, and constitutes his timely, judicious and '*paramarthik*' persuasion, if not advice, towards rejuvenating the Vaishnava community to the spirit and clime of Sri Ramanuja.

The conclusion neatly sums up the salient points of the study discussed in earlier chapters.

Apart from his legal erudition and painstaking efforts to collect and collate the relevant records of the last three hundred years and to present a logical and a humanitarian view of the disputes and solutions, what impresses the reader most is the author's liberality of mind to illumine and enlighten his readers, especially the Vaishnavites on the realistic exigencies of the clime and on the need to accommodate their claims because,

"In democracy, the will of the majority prevails"

The study begins with a rueful note.

"What have perturbed me in the recent years are the unending and frivolous fights among the Vaishnavites for flimsy reasons and on trivial grounds. They go to the extent of taking the fight to the streets and to the courts of law for finding a solution to solve all the differences and disputes".

It ends, however, on a positive and persuasive note.

"From the observations of the Courts stated above, it can be safely concluded that the Judges in Courts of Law expect the two sects, 'Thenkalai' and 'Vadakalai' to be more broad-minded, to be mutually accommodative and carry on the services in the temples uninterruptedly and with a spirit of give and take policy, whatever may be the justification or legality of the merits of the contentions of the respective sects on particular issue."

The study comes to a close with a note of optimism when the author says,

"As on date, Srivaishnavites of the two sects, at any rate, the overwhelming majority of them, have realized the folly of futile disputes and have come closer together, even having inter-marital relationships".

The author Mr. T.S. Ramaswamy, an eminent Lawyer and to my knowledge the only Lawyer who got Doctorate outside law subject in Chennai deserves all appreciation and approbation. I am happy to repeat and highlight that it is his nobility of mind, societal care and above all his altruistic interest in the well being of Vaishnavism that impresses the reader and inevitably convinces him of the sane and sagacious conclusions.

JUSTICE K. VENKATASWAMI
(Former Judge, Supreme Court of India)

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FOREWORD

I am happy and proud to state that the thesis submitted for the Ph.D degree (Department of Vaishnavism) by the Research scholar Dr.T.S. Ramaswamy, under my guidance and supervision is now published in the form of a book. The fact is that the scholars who have examined the thesis have strongly recommended for the publication, because of its original ideas, sound analysis and simple but powerful language.

There were two sub-sects among Srivaishnavites known as Thengalai and Vadagalai. On several occasions they fought with each other to establish their respective rights through the courts of law.

There were people who fought for the sake of the National Flag and even sacrificed their life, because they considered that that the honour of the country is represented in the Flag. In the same way *Namam* is the symbol of the whole sect and their *Thaniyan manthram* in praise of their *Acharya* is their breath. If there is an invasion of the *Namam* or *Thaniyan manthram* in any temple, there is agitation and tension, and therefore the problems arise. So long as the respective *namam, thaniyan manthram* and other rituals connected with the subsect in a particular temple are intact, undisturbed and uninterrupted by external elements, there will be no controversies. In case of interference only, the parties are constrained to seek solutions in the courts of law.

The disputes between two sub-sects of Vaishnavism regarding temple rituals and administration in the Vaishnavite

temples have not always been unavoidable. It is true that genuine sectarian dispute can be properly solved only by the learned Judges in the courts of law. The complicated matters have to be solved only by the Courts and therefore the aggrieved parties have to resort to litigations. Apart from doctrinal differences between the two sects, Thengalai and Vadagalai, on numerous occasions, there have been misunderstandings on the ambit and scope of the rights of the parties in respect of rituals.

But, at the same time, all flimsy and futile litigations must be absolutely averted. Wherever possible, the parties must resort to arbitration and settlements instead of wasteful litigations.

Dr. T.S.Ramaswamy, a leading lawyer, has dealt with Judicial Solutions for Temple disputes in a clear, cogent and exemplary style. The remarkable feature in the book is his sincere approach and thorough impartiality. He has only quoted the Judgements and put them into critical analysis. His eagerness to establish unity between two sects is to be appreciated and encouraged. On the whole, the book is not only useful to the lawyers but also to the public. Dr T.S. Ramaswamy is well known among Srivaishnavites for his achievement in bringing together all the Jeer swamis (Thengalai and Vadagalai) on the same platform before a huge crowd and in establishing the confederation of Jeers called "Srivaishnava Yathi Sammelanam" for which he is the General Secretary.

The concern of Dr. Ramaswamy is the unity among all and it is well reflected throughout the book. At the same time, he has dealt with Judicial solutions for Temple disputes in a strong, straightforward and scholarly manner. The unique and significant factor about this book is that the author intelligently blended Law and Vaishnavism for the first time in the long history of research and hence this book is the most commendable work.

Dr. M.A. VENKATAKRISHNAN

ACKNOWLEDGEMENTS

In the year 1921, my grand father, late Shri T. Thiruvenkatachariar, an agriculturist at Thinnaloor village, near Mathuranthakam, built a temple out of his own self-acquired funds and involving his physical labour in it. He found the MOOLAVAR idol during Agricultural operations in his land, and got the UTSAVAR covering a distance of 900 miles on foot to and from SRIVAIKUNTAM carrying the idol on his shoulders while returning. When I was young, he and other relatives used to narrate his remarkable achievements several times and perhaps, this was the first inspiration for me to learn about temples. Subsequently, my father late Shri P.T. Sadopachariar, Advocate, Tindivanam, my senior Late Shri R. Gopalaswamy Iyengar, Senior Advocate, Chennai and several others nourished my interest in Srivaishnavism.

Senthamizh Vedhiyar Kumaravadi Shri S. Ramanujachariar, Editor "Thirumal", and disciple of Late Sri Karpangadu Venkatachari Swamy, came to my residence regularly for more than two years and taught me and my wife the '*Rahasyas*', particularly *Mumookshuppadi* and *Tattvatrayam* and I will ever remember him for my learning the basics.

But, however, the best opportunity for me to improve my knowledge in Srivaishnavism was given to me in the Department of Vaishnavism, University of Madras, where I studied M.A. Vaishnavism. How can I forget the soft-spoken professor Dr. M. Narasimhachariar, the then Head of the Department, the unassuming Dr.V.K.S.N. Raghavan, the present Head of the Department and ever vibrant Professor Dr.M.A. Venkatakrishnan?

My guide Dr. M.A. Venkatakrishnan, has helped me at every stage and his cooperation in bringing out this book is unforgettable.

I thank His Holiness Sri Kaliyan Vanamamalai Jeer swamy, a great Vaishnavite scholar and Acharya, well-versed in several languages including Tamil, Sanskrit, Hindi and English, for sparing his valuable time to go through my book and write a scholarly foreword in simple, but great style.

Mr.Justice P.R. Gokulakrishnan, the former Chief Justice of Gujarat High Court, was mainly instrumental in starting the Department of Vaishnavism, in the University of Madras and several other Departments like Saivism, Jainism etc. But for his efforts and foresight, several aspiring students would not have become scholars. I thank him for his outspoken foreword for the book.

I thank Mr. Justice K.Venkataswamy, former Judge, Supreme Court of India, for devoting much time and attention in going through the book and writing a classic foreword.

I thank Prof. Dr.M.A. Venkatakrishnan for adding to the value of the book by contributing his comments in his excellent foreword.

I thank Dr.V.K.S. Raghavan, the Head of Department of Vaishnavism, Dr.K.K.A. Venkatachari, Dr.K.V. Raman, Shri A. Krishnamachari and 'Manthrapushpam' Sri Bashyam for helping me with a few books during my research.

I thank Dr.Bhooma Venkatakrishnan for her valuable suggestions every now and then.

I have to mention the help rendered by my wife Smt.Lakshmi Ramaswamy in the proof reading and for her valuable suggestions on several occasions.

My children Mythili & Krishnan, Murali & Viji, Sarathy & Sashi and Venkat & Vidhya have always been a source of inspiration by their words of encouragement for my research and publication.

My stenographer Shri S. Ramanujam, has not only been doing clerical and typing work, but also actively involved himself discussing frequently on the subject, and he deserves special mention.

I thank all my friends and well-wishers for having encouraged me to publish my thesis for which Ph.D was awarded to me.

Above all, I thank my Acharyan Sri U.Ve. K.K.C. Vedanthacharyar Swami of Doddacharya Thirumaligai, Sholinghur, without whose blessings, nothing would have moved in my life in the right direction.

T. S. RAMASWAMY

T.S. Ramaswamy being awarded Ph.D. Degree.

This book is dedicated to my parents

Smt. KAMALAM AMMAL

&

Sri P.T.SATAKOPACHARI

Advocate, Thindivanam

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Abbreviations

All.	=	Allahabad
AIR	=	All India Reporter
Bom.	=	Bombay
CRLJ	=	Criminal Law Journal
CS	=	Civil Suit
DB	=	Divisional Bench
FB	=	Full Bench
HC	=	High Court
I.A.	=	Indian Appeals
ILR	=	Indian Law Reporter
LW	=	Law Weekly
Mad	=	Madras
MIA	=	Moors Indian Appeals
MLJ	=	Madras law Journal
MWN	=	Madras Weekly Notes
Mys. L.J.	=	Mysore Law Journal
OS	=	Original Suit
PC	=	Privy Council
SC	=	Supreme Court
SCC	=	Supreme Court Cases
SCR	=	Supreme Court Reports
Supp.	=	Supplementary
U.S.	=	United States

CHAPTER - I

INTRODUCTION

Anyone who faces the problems of the family and society boldly and spends all his life attempting to solve them is far superior to the one who, unable to face such problems, runs away to a far off mountain and lives in seclusion for ever.

The problem today according to enlightened persons, is that the entire global society is in the grip of blind materialistic pursuits, ignoring moral and spiritual values of life and the truth that where money accumulates, man decays.

"Having the fewest wants, I am nearest to the gods"- so said Socrates. If we have an honest introspection of our life, it is not difficult to realise that we are all running away from God, since we constantly keep increasing our wants and, consequently, are always making wild-goose chase getting more and more intoxicated by money.

The problem therefore is an inevitable product of our unbridled desire. We always try to treat the symptoms of the disease, but never the source. Saint Thomas Acquinas says:-

"There are three things necessary for the salvation of men; to know what he ought to believe, to know what he ought to desire and to know what he ought to do".

Since we do not know what to believe, since we do not know what to desire, and since we do not know what

we should do, even on the smallest provocation, we jump into the fighting arena and keep fighting among ourselves forever without any purpose or direction.

No doubt, the 'right to differ' is recognised everywhere for the growth of Democracy. But then, I have only a right to differ from you; but do I have the right to convert every difference into a dispute, every dispute into hostility, and every hostility into litigation?

Some people are of the view that religion is a source of all disputes and therefore we must get rid of all religions and gods so that, we will forever live in peace. This view is based on total misconception of facts relating to the history of man, and contrary to the established and proved truth.

The evidence for the existence of God lies primarily in inner personal experiences. It is the heart which experiences God and not the reason.

Religion is inspired by ceaseless quest for truth, which has many facets to release and free the soul from ceaseless cycle of birth and death to attain salvation.[1]

"Each soul is potentially divine. The goal is to manifest this divinity within, by controlling nature, external and internal. Do this either by work, or worship, or psychic control, or philosophy - by one, or more, or all of these – and be free. This is the whole of religion.

1. Justice K. Ramasamy in A.S Narayana Deekshitalu Vs. A.P. State in 1996 (9) SC 548

Doctrines, or dogmas, or rituals, or books, or temples, or forms, are but secondary details.

Religion is based upon faith and belief, and, in most cases, consists only of different sets of theories, and that is the reason why there is difference in form."[1]

"There are two aspects of religion, true religion and religionism. True religion is spiritual religion that which seeks to live in the spirit, in what is beyond the intellect, beyond the aesthetic and ethical and practical being of man, and to inform and govern these members of our being by the higher light and law of the spirit. Religionism, on the contrary, entrenches itself in some narrow pietistic exaltation of the lower members or lays exclusive stress on intellectual dogmas, forms and ceremonies, on some fixed and rigid moral code, on some religio-political or religio-social system. Not that these things are altogether negligible or that they must be unworthy or unnecessary or that a spiritual religion need disdain the aid of forms, ceremonies, creeds or systems. On the contrary, they are needed by man because the lower members have to be exalted and raised before they can be fully spiritualised, before they can directly feel the spirit and obey its law".[2]

"Religion is a specific attitude of self, itself no other, though it is mixed up generally with intellectual use,

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1. Swami Vivekananda-Complete works, Vol.I page 124 as stated in 1996(9) SCC 548
2. Shri Aurobindo – The Human cycle, the ideal of human unity war and self determination – page 166 as stated in A.S. Narayana Dikshitalu Vs. State of AP (AIR 1996(9) SCC 548)

aesthetic forms and moral valuations. Religion is absolutely a matter of faith with individuals or communities and it is not necessarily theistic. [1]

"The Upanishads teach us that India has sought in religion not an absolute or finished dogma to believe in, but a method and means to pierce the veil that hides every present meaning and mystery of existence. The earnestness of the search for truth is one of the delightful and commendable features of the *Upanishads*"[2]

"Experience is the only source of knowledge. In the world, religion is the only science where there is no surety, because it is not taught as a science of experience. This should not be.

There is always, however, a small group of men who teach religion from experience. They are called mystics, and these mystics in every religion speak the same tongue and teach the same truth. This is the real science of religion. As mathematics in every part of the world does not differ, so the mystics do not differ. They are all similarly constituted and similarly situated. Their experience is the same; and this becomes law."[3]

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1. Dr.S. Radhakrishnan as quoted in AIR 1996(9) SCC 548 page 568-569
2. Robert ernest Hume in The thirteen principal Upanishads page 30 as quoted in 1996(9) SCC 548
3. Swami Vivekananda's lecture on Religion and Science in The Complete Works (Vol.VI) page 81 as stated in A.S. Narayana Dikshitalu Vs. State of AP, 1996(9) SCC 548

Alwars' mystical experiences revealed in their verses are law and life for Srivaishnavites particularly in South India.

"Religion is not merely the worship of God, but the knowledge of God, for if it does not know its God then God is a figment of the imagination and it worships it knows not what. All honest religion necessarily involves a strenuous effort to know the supreme reality, and the knowledge of God must involve all knowledge in its scope".[1]

As Aristotle has put it, "All men by value desire knowledge".

Since our country has several religions and several faiths, every one talks of unity in diversity.

The Supreme Court says:

"In the midst of unity in diversity among Indians having different religious and cultural hues, for their assimilation as integrated citizens, all endowed with human rights, dignity of person, equality of status, liberty of faith and worship with fraternity, the religious spirituality fosters them as a strong unifying social entity with personal identity".[2]

"Religion in India taught that man, in the course of his development, in the course of his self-expression, generates various forces, physical or mental, social or

1. John Macmurray: Reason and Emotion (Faber and Faber) as stated in 1996(9)SCC 548 at page 573
2. (1996) 9 SCC 548 (A.S. Narayana Dikshitalu Vs. State of AP) page 585

political, and that the development of these forces needs to be matched by a corresponding development of his inner spiritual resources, which alone can provide the factors of stability to an evolving personality or social system.

True democracy is inconsistent with a narrow self-sufficient nationalism or sectarianism; it must tend to reach out to the universal. Breaking the barriers of caste and creed, race and sects, high and low, the democratic ideas, deriving its sustenance from the divinity in man, marches on, without obstruction, to the realization of the universal."[1]

The preamble of the Constitution of India sets out secularism, equality, fraternity, liberty of worship and faith and dignity of persons as integral scheme of the Constitution in its march to establish an egalitarian social order. Fundamental Rights and Directive Principles seek to resuscitate them. In S.R. Bommai Vs. Union of India,[2] a larger Bench of nine Judges has held that:

"The popular Hindu religion of modern times is not the same as a religion of the Vedas though the latter are still held to be the ultimate source and authority of all those held sacred by Hindus. In course of its

1. Swami Ranganathananda in his lecture on Science, democracy and religion delivered on 28.8.1954, in Ramakrishna Mission institute of culture, Calcutta, published under the title "Eternal values for a changing society"-as quoted by Supreme Court in 1996(9) SCC 548 at page 588
2. (1994) 3 SCC I

development, the Hindu religion did undergo several changes, which reacted on the social system and introduced corresponding changes in the social and religious institution. But, whatever changes were brought about by time it cannot be disputed that they were sometimes of a revolutionary character-the fundamental, moral and religious ideas of the Hindu which lie at the route of their religion and charitable institution remained substantially the same and the system that we see around us can be said to be an evolutionary product of the spirit and genus of the belief passing through different ways of their cultural development".[1]

The views of the great people of our country have to be respected and considered in dealing with problems pertaining to disputes in religion and temples.

The problems faced by the *Srivaishnavite* temples and *Srivaishnavas* today are innumerable and service-minded people should constantly make unstinted efforts to solve the problems instead of keeping aloof from them grumbling throughout their life. What have perturbed me in the recent years are the unending and frivolous fights among the *Srivaishnavites* for flimsy reasons and on trivial grounds. They go to the extent of taking the fight to the streets and to the courts of law for finding a solution to solve all their differences and disputes.

---

1. Justice B.K.Mukherjea in his Tagore law lectures on Hindu law of Religious and Charitable Trust in Page 1 as quoted by Supreme Court in 1996(9) SCC 548 at page 595.

When *Bhagawat Ramanuja* stabilized and firmly established *Srivaishnavism* all over the country, he would not have dreamt that after his lifetime, *Srivaishnavism* would be split into two sects *Thengalai* and *Vadagalai*. The great Saint, philosopher and thinker integrated *Srivaishnavites* all over the country and worked towards his goal untiringly. Towards this end, he introduced several reforms in the *Srivaishnavite* temples, established *UbhayaVedanta* on firm footing, thus keeping Sanskrit *Vedas* and Tamil *Prabhandams* on the highest pedestal of respect. He, with his far-sighted wisdom, embraced people of all communities and was the first saint to implement social justice in the field of religion and philosophy. He nominated seventy-four *Simhasanadhipathis* to establish and run *Srivaishnavite* mutts all over the country. The Supreme God is '***Sriman Narayana***' and the only acceptable interpretation of 'The *Brahmasutras' is Visishtadvaita* philosophy. Even after the life-time of Sri Ramanuja, for hundreds of years, all *Srivaishnavites* remained united in the spirit of unity and tolerance, worshipping *Sriman Narayana*, as the only *Parathathva* God, adored Ramanuja as their *Acharya* and accepted *Visishtadvaita* as their philosophy. It was a wonderful period to be embedded with gold.

But, however, unfortunately, on account of certain differences on intellectual plane, the disciples of two great scholars/Acharyas, Shri *Pillailokacharya* and *Shri Vedanta Desika*, have created a vertical split in *Srivaishnavism*,

and formed two groups, *Thengalai* and *Vadagalai*. This is broadly the accepted history. But, from the records of the Court proceedings, it is obvious that by resort to complaints with the authorities and litigations in the law courts, the differences between the two sects became undesirable disputes exposed to public criticism and inviting ridicule from others for the past two hundred and fifty years.

Many eminent *Srivaishnavites* who had done yeomen service to Srivaishnavism were unfortunately trapped in these fights in the courts of law and got submerged in eternal agony and acrimony.

Recently, one of my friends told me that most of the cases relating to temple disputes decided years back have no validity and relevance today in view of the provisions of Constitution of India, Tamil Nadu Hindu Religious and Charitable Endowment Act and the recent decisions of the High Court and the Supreme Court. I could not agree or disagree instantly. I therefore undertook the study of the decided cases of the *Kancheepuram Shri Devarajaswami* temple disputes as a sample and a few other cases from other important temples as well and tested their validity and relevance to the changed situation after the coming into force of the Constitution of India.

While the whole world is changing fast in all spheres of life, more so, law and legal institutions have undergone significant changes in the last three hundred years. Since we follow the Rule of Law,as propounded by English jurists

as the basis for our administration of Justice, in the evolution of Law and fast changing society, one must always be alert in understanding the basic laws and must keep abreast with the changes in Law, latest judicial decisions and the needs of the changing society.

Therefore, during my research on the subject, I had to bear in mind the above mentioned points.

On completion of my research, I have come to the conclusion that, by and large, the earlier decisions relating to the *Kanchipuram Sri Devarajaswami* temple and other temples are absolutely valid and relevant even today. Further, the research has established the futility of the fights among two sects and the absolute necessity of their cooperation and coordination in all religious matters pertaining to the Temple administration and in order that the large body of Worshippers would benefit by the smooth functioning of the temples. It would also give a quietus to the criticisms of Srivaishnavites by others, justified or otherwise.

Sri Devaraja Swami Temple, Kancheepuram, known as *PERUMAL KOVIL* is a renowned *Vishnu* temple, known all over the world for its historic and religious importance.

However, the temple has been a centre of several disputes between the two sects of the *Srivaishnavites*, the *Thengalais* and the *Vadagalais*. Eminent scholars and several prominent *Srivaishnavites* have unfortunately wasted their energy, time and money on perpetrating these issues and endlessly continuing them to the absurd limits,

making them laughing stock of the society at large. Most of the disputes were at *Srirangam,* Tirumalai, Kancheepuram and some other Divya Desams also. The learned Judges of the High Court, the Supreme Court and Privy Council have time and again critically commented on this never-ending acrimony between the two sects. Research shows the futility of disputes between them, and the need for amicable settlements.

But, however, it is not my endeavour to dwell at length on all such cases. My effort will be to analyze a few landmark judgements pertaining to the Kancheepuram Temple and try to assess their validity and relevance in the present day context of things and in view of a few recent Supreme Court decisions. I do not claim this book either to be exhaustive or offering a final solution for all the problems faced by the *Srivaishnava* Temples, and *Srivaishnavites*, But, certainly, this book will be useful to understand the basic laws pertaining to temples and religion, and the Court's interpretation of such laws. This will help the settlement of disputes, if possible by arbitration without resort to Courts. The principles of Law discussed in this book are mostly applicable to similar disputes arising from all temples.

From the available texts and the decisions of the courts, the most relevant documents and passages are culled out for the purpose of this book.

This book is devided into Eight chapters including Introduction (First Chapter).

The second chapter gives a brief history of early temple disputes and also a short account of the sectarian disputes.

The third chapter is a study of seven important cases from *Shri Varadarajaswami* temple, *Kancheepuram*. At the end, an analysis of the principles of law decided in those cases is given.

In the Fourth Chapter, for the purpose of comparative study, a few cases from *Triplicane, Tirumalai* and *Srirangam* temples are dealt with.

The fifth and sixth chapters deal with the relevant provisions of Constitution of India and important decisions of the Supreme Court interpreting those provisions.

The most important chapter is the seventh chapter. Though this chapter mainly discusses the validity and relevance of *Kancheepuram* cases even today, it applies equally to the cases from other temples as well.

The Eighth and concluding chapter "Conclusion" (or perhaps more appropriately called "Epilogue") explains the lessons we learn from the analysis of various cases. Further, a few suggestions are also humbly presented for consideration by the learned *Srivaishnavites* to benefit the entire society.-

CHAPTER - II

HISTORY OF TEMPLE DISPUTES

PART- I : EARLY RULERS AND TEMPLES

In India, the deity or idol in a public temple is a 'Juridical' person and is the owner of the temple, its properties and all other assets. This is not only the popular and scholarly view, but also recognized by the law of our country.

The Tamil word "*Kovil*" means both temple and the royal abode. Temple servants are referred to as "*Parijanangal*" (courtiers, servants of the King). All the paraphernalia attached to temple deities especially when they are taken out in processions is almost the same as what existed for the kings like the Conches, Palanquins, Umbrellas, Elephants etc. In fact, the people respected the King because he was considered to be the representative of God.

In the ancient days, the king had acted as a protector of temples and their properties. He administered the temples through his agents and also performed judicial functions by his arbitration and other orders. The King was the servant of the deity as well as its protector.

In the late 7th and 8th centuries, the *Pallava* Kings were giving gifts to the temples for their maintenance. Then the *Chola* Kings (900-1200 AD) made generous Royal endowments. After 1350 AD, and during the three

centuries of *Vijayanagara* rule, there was considerable growth and expansion of temples in South India. Temple endowment became a major technique for the extension of Royal control into new areas, and transaction involving material resources and temple honours permitted the absorption of new local constituencies into *Vijayanagara* rule. In fact, the inscriptional and sectarian sources describe the process of defeat of the Muslim invaders of *Tamil* country by *Telugu* warriors, the restoration of these warriors of temple worship alleged to have been interrupted or destroyed by the Muslims and the establishment of a new political order by these telugu warriors.

Even before *Vijayanagara* period, there were many powerful local personalities and groups exercising fragmented control in the temple administration.

There were also temple disputes and examples of regal arbitration in temple affairs referred to in several research works.[1]

All the said authoritative settlements of temple disputes were neither legislative nor judicial but only administrative commands out of arbitration facilities. The King or his agents participated in those arbitrations and

1. Epigraphia Carnatica IV Ch 113, 15 quoted in B.A. Saletore, Social and Political life in the Vijayanagara Empire, 1346-1646, 2 Vols (Madras 1934) 2:355, Annual report in South Indian epigraphy, para 51, reported in Mahalingam, south Indian Polity, PP-225-6, Annual report on south Indian Epigraphy, 1914 PP96-97, reported in Saletore, Social and political life, 1:375-6 as stated in "Worship and Conflict under colonial rule- A South Indian case" by ARJUN APPADURAI.

those commands were called "*Vyvastas*"(regulations) to solve disputes among local groups in the temples. Thus, in the middle period of South Indian history, i.e., 14th, 15th and 16th centuries, the temple disputes were solved by administrative commands (*Raja Saranams*) by the arbitrations held by the Kings or his agents. In settling disputes between subjects, the king merely did his duty, which was to secure order and peace in his realm.

In short, between the years 1350 and 1700 AD, the king performed the twin duties namely, donation and protection in respect of the temples, and this formed the basis for a dynamic set of relationships between warrior kings, sectarian leaders and temples, which had important consequences for *Srivaishnava* sectarian development.

PART-II

ENGLISH BUREAUCRACY AND TEMPLE DISPUTES

The formation of Board of Revenue by the British rulers in the year 1789 reflected the increasing bureaucratic centralization of the colonial state in South India. The basis for increased bureaucratic involvement in Temple affairs had been laid by the year 1800. Even earlier, during the middle of 18th century, there were groups and factions in temples and they preferred complaints to the East India Company authorities.

When the temple was in need of external intervention in situations of conflict and infighting in the temple administration, the British authorities were

reluctant to arbitrate Temple disputes, particularly, those classified as 'religious' disputes.

In those days, accusations of 'embezzlement' (misappropriation) were quite common in the complaints and they were liberally used to express the core structural tensions in the temples.

While English authorities were ready to hear and arbitrate on the charges of misappropriation, they wanted to disassociate themselves from the fight relating to rituals, and returned them to the native themselves to arbitrate.

The English bureaucracy was always eager to uphold the custom and traditional practice prevailing in the temples. The East India Company in order to protect the rights of the temple, like the King in the earlier days, only when the temple requested for an order, interfered by way of arbitration or relying upon English Judicial system.

In one of the cases, the Board of Revenue issued an order to the *Dharmakartas* to conform to such orders as they may receive according to established usage.

Thus, by the year 1818, several factors had emerged that remained central to Temple politics in the 19th century. First, temple control gave rise to disputes that were not manageable within the confines of temples itself, and consequently required the arbitration of the state. Second, the involvement of state in temple affairs was uneven. The English administrators wanted to separate the executive arm of the Government from the judiciary.

An independent and superior model authority, namely the Judiciary, was available as an institutional forum and tool with which to actualize such challenges to the effectiveness of British administrative/political control over the institutions.

In 1841, in response to pressures from several quarters, the Court of Directors of East India Company, decided to withdraw from all interference with native religious establishments. In response to a petition, requesting the reconsideration of this decision, the Chief secretary to the Madras government reiterated its orders to the Board: "*the Board will further carefully explain to the Petitioners that the object of the recent orders is to give them the sole control of their own religious institutions, that they will still be protected by the Courts of Justice, and that the Magistrates will take care that the peace shall be maintained on all occasions*".[1]

The withdrawal of the British bureaucracy from direct involvement in temple affairs after the year 1842 and the shift of the temple conflicts to the Court were the inevitable consequences of the separation of executive and Judiciary under British rule and the reluctance of British bureaucracy to arbitrate temple disputes.

The principle of freedom of religion was eloquently declared in Queen Victoria's proclamation of 1858 in the following passage:

1. "Worship and Conflict under Colonial rule- A South Indian case by ARJUN APPADURAI

"Firmly relying ourselves on the truth of Christianity, and acknowledging with gratitude the solace of religion, We disclaim alike the right and the desire to impose Our convictions on any of our subjects. We declare it to be Our Royal will and pleasure that none be in anywise favoured, nor molested or disquieted by reason of their religious faith or observance; but that all shall alike enjoy the equal and impartial protection of the law, and We do strictly charge and enjoin all those who may be in authority under Us, that they abstain from all interference with the religious belief or worship of any of our subjects, on pain of our highest displeasure. And it is our further will that so far as may be, Our subjects as whatever race or creed be freely and impartially admitted to offices in Our service, and duties of which they may be qualified, by their education, ability and integrity duly to discharge".

The British policy in respect of law and judicial system in India was two fold. (1) Indian custom and usage in the temples should be kept in tact. (2) At the same time, rationality and uniformity in indigenous law should be enforced by English ideas and mechanisms into the legal systems in India, and the serious, though unintended, alteration of key features of Indian society and culture.

Until the year 1862, the British-Indian courts were organized in a two-tier system of bifurcated type: Supreme Courts in the presidency town (Madras, Bombay, Calcutta), which were wholly modelled on the court of the

King's Bench in England, and mofussil (provisional) courts, which were under the authority of the East India company. In the year 1862, four years after the English crown had assumed direct rule over India, these two systems were fused. High courts were created in Bombay, Madras and Calcutta, which were the original and appellate courts of the Presidency towns, and in their respective provinces appellate courts comprised the lower judicial apparatus. Thus a single system of courts was established in the year 1862 in which there was only one major departure from the English model. The English distinction between law and equity, which had never been important in British India, was ignored, and English common law and English equitable doctrines were fused, both in Indian legislation as well as in case law, partly through the powerful influence of the judges of the High Courts and the percolation of their synthetic use of English principles of law and equity into the lower courts.

As early as 1781 AD, judges in Indian courts were enjoined to operate on the English maxim of "justice, equity and good conscience", thus creating a major channel for the entry of English legal concepts into Indian courts.[1]

The History of various laws enacted in respect of Temples will be discussed later in another chapter.

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1. "Worship and Conflict under Colonial rule- A South Indian Case" by ARJUN APPADURAI

PART-III SECTARIAN DISPUTES

Towards the middle of the 14th century, certain scholastic differences within the *Srivaishnavite* community in South India had started and slowly developed in the form of elite debates. By the end of the 17th century, this rift had become the intellectual expression of a complex social phenomenon, namely, the division of the community into two antagonistic sub sects, which were beginning to compete, pan-regionally for control of *Srivaishnava* temples.

Shri Ramanuja's greatness consists not only in systematizing *Srivaishnava* with the basis laid by his predecessor, *Yamunacharya,* well known as "*Alavandhar*", but also in bringing to bear his Sanskritic and *Veda* oriented ideology and methodology on the purely devotional heritage of the *Alwars,* and thus creating what is called *UBHAYAVEDANTA. Shri Alavandhar* in his '*Agama Pramanya',* established the orthodoxy of the *Paancharatra Agamic* school, whose adherence in south India had placed great emphasis on *Archavatara* (The presence of God in images) and thereby concentrated their brand of devotionalism as temple ritual. The major organisational aspect of *Ramanuja's* activity was his work in temples, which involved the regularisation and systematisation of temple worship, the sanctification of the recitation of the *Divyaprabhandham* as a formal part of it, and the allocation of duties and corresponding honour to all those regularly involved in temple service. The '*Kovil-olugu',* which

describes Ramanuja's code (*Udayavar thittam*) for the *Srirangam* temple, is a brilliant document intended to be the cultural and organisational model for all other *Srivaishnava* temples.

Modern *Srivaishnava* historiography attributes the formal division of *Srivaishnavism* into two schools (*kalais*) to the leadership and activities of *Pillailokacharya* (1205-1311 AD), and *Vedanta Desikar* (1269-1369 AD), who are considered the founders of the Southern (Thengalai) school and Northern (*Vadagalai*) school respectively. This view may not be quite correct. Although, both these great *Acharyas* did differ on certain interpretations of the ancient texts, they were learned and scholarly interpretations, and these *acharyas* never intended to split *Srivaishnavism* into two groups. It is more probable that, after their lifetime, certain disciples of these *Acharyas* exaggerated the scholastic differences and paved way for the vertical split of *Srivaishnavites* into two groups.

But, it was during the lifetime of Shri *Pillailokacharya,* and Shri *Vedanta Desika,* that the scholastic possession of the two schools received their most elaborate formulations. *Vedanta Desika* produced more than one hundred and twenty works, and he was the acknowledged leader of the Sanskrit school. The eighteen treatises composed by *Pillailokacharya*, subsequently termed the *Astadasarahasyam (Eighteen RAHASYAS),* undoubtedly form the philosophical basis of what came to be called the *Thengalai* sect.

Therefore, towards the end of the 14th century and beginning of the 15th century, South Indian *Srivaishnavism* was an intellectually divided community. This intellectual division had created two lines of succession in '*Guruparampara*' (Sect leadership) which were to provide the skeleton for the affiliation of *Srivaishnava* leaders all over south India. The battle was largely scholastic. Its primary sociological expression, conflict over temple control had not yet begun, even in *Srirangam,* where on the whole *Ramanuja's* arrangements remained stable. It was only after the second half of the 16th century that these tensions exploded out of textual and rhetorical arenas to the primary political arenas of temple and royal court.

The last decades of the 14th century witnessed the break down of the first dynasty of *Vijayanagara* and the concomitant rise of the *Saluva* dynasty. This turbulent political shift had its effects on temple politics at *Srirangam.*

It was in this environment that *Prabandic Vaishnavism* at *Srirangam* received its institutional from under the leadership of *Manavala Mamuni* (AD 1370-1445). During his lifetime, *Prabandic Vaishnavism* became the dominant sect of the southern parts of the Tamil country. It made inroads as well into the northern parts and marginally into the Telugu and Kannada countries. *Manavala Mamuni's* activities involved a judicious combination of five kinds of strategies:

(1) the enhancement of the *Prabandam* as an authoritative source;

(2) the elaboration of the importance of radical submission to the *Acharya*;

(3) the creation of subsectarian networks organized around "discipleship", which spanned most of Tamil country;

(4) the use of royal patronage to provide both material resources and royal honours for sectarian leaders in specific localities; and

(5) the specific linkage of subsectarian affiliations to temple control. The interdependent and synthetic use of the fivefold strategy by *Manavala Mamuni* specifically ensured *Thengalai* control over a number of temples in South India.

On the whole, by the early part of the 15th century, the activities of sectarian leaders of *Prabhandic* school, given an organisational and ideological basis by *Manavala Mamuni* and his network of disciples, had ensured that most of the *Srivaishnava* temples in Tamil country, were controlled by the sectarian leaders of the Tamil school.

Though sectarian leaders of the Sanskrit school were involved in temple related activities during this period, it was only after 1500 AD that they created a counterstructure of an institutional sort by linking themselves to the then rulers.

Two sets of sectarian leaders were responsible for the major part of this activity; Members of the *Tatacharya* family of *Acharyapurushas,* who spread through the Telugu

1. "Worship and Conflict under Colonial rule- A South Indian Case" by ARJUN APPADURAI p.90

districts in the sixteenth century; and the *madathipathis* (monastic heads) of the *Brahmatantra Parakala Svami Matam* in *Mysore.*

PART-IV: DIFFERENCES, DISPUTES AND LITIGATIONS

Although differences arose among the post *Ramanuja Srivaishnavites*, regarding some doctrinal points, there were no disputes or conflicts, much less hostilities and violence among them for quite some time.

The differences among them were particularly prominent at *Srirangam, Tirupathi, Kancheepuram,* and a few other *Divya Desams,* where *Srivaishnavite* scholars and several knowledgeable *Srivaishnavas* lived.

In fact, the most intensely bitter and socially disruptive sectarian feuds among Hindus in nineteenth century Tamil society were not between *Srivaishnavites* and *Saivites*, but were within the *Srivaishnava* movement itself-between the *Vadagalais* or 'northerners' and *Thengalais* or 'southerners'.

Sri Ramanuja himself appears to have drawn no distinction between Sanskrit and Tamil works and treated them both as equally useful for religious worship. Some of the followers, however, known subsequently as *Thengalais*, came to prefer Tamil literature including the *Prabandhams* or hymns of the Alwars or saints. Others (the *Vadagalais)* made greater use of Sanskrit texts. Disputes between these two groups tended to arise especially over the question of the priority to be given to the recitation of the *Prabandhams* or the chanting of the *Vedas* in Temples.

Linked with the linguistic and textual division were doctrinal differences including conflicting views as to the means and availability of salvation and these views have very different social implications.

"Vadagalais emphasize 'cooperative' grace, or grace obtained only because of merit. Govindacharya puts it rather strongly: grace can be 'bought' though this may be a rather strong expression, for even here it is recognized that the Jiva is absolutely dependent on the Lord's freely giving it; but the emphasis is on the point that it comes as reward of the effort of the salvation-seeker. The Thengalai doctrine, on the other hand, stresses the sovereignty of grace as such, and formulate the classical 'extreme' of irresistible grace-irresistible primarily in the sense that it comes unmerited."[1]

The issues dividing *Thengalais* and *Vadagalais* in the nineteenth century were not very different from what they had been in the pre-modern period. What was new was the way in which the parties attempted to achieve their aims through the new political structure and new legal system. The struggle was conducted not merely in the temple itself, but outside through the new temple committees and in the law courts; and appeals were made not only to local officials but to authorities in Madras and even overseas.

The troubles between *Thengalai Sthalathars* (local *Srivaishnavites*) of the *Kancheepuram Sri Varadararajaswami* Temple and the *Thathacharyas*, the

1. "A Philosophy of Devotion" – by John C.Plot.

first "*Theertham*" holders, were brewing in the first part of the 18th century and gradually turned into open disputes and hostilities leading to undesirable and ugly sectarian disputes. As stated already, the English authorities, pursued the policy of non-interference in the internal administration of the temple. Therefore, the period from 1842 to 1912 AD, when the *Thathacharyars* held the post of the Executive trustees of the temple with unlimited powers was a period of *Vadagalai* ascendancy. Since the local *Thengalai Srivaishnavites* had customary rights and privileges in the temple, the conflict between the two sects became inevitable. Naturally, the matter was referred to the law courts for decisions as to the respective rights powers and privileges in respect of (1) Invocatory verse (2) '*Arulappadu*' rights (priorities in Temple honours) (3) *Poojas* and festivals for the *Alwars* and *Acharyas* (4) Closure of the Shrine of *Manavalamamuni*, the *Thengalai A*charya (5) Sect-Mark ('*Namam*'), and other matters.

It is practically impossible to deal with all the cases that have been decided by Courts of law in this book and, therefore, the most important Judgements of *Kancheepuram Shri Varadarajaswami* Temple have been selected to test their validity and relevance today, in view of the provisions of the Constitution of India, Supreme Court cases and legislative enactments. For the sake of comparative study, the history of Triplicane Sri Parthasarathy Swami Temple cases, a Thirumalai Tirupathi case decided by the Privy Council in the pre-Constitution period, and a Srirangam Temple case are also been considered.

பெருந்தேவித்தாயார் பேரருளாளன் (தேவராஜன்) காஞ்சீபுரம்

CHAPTER - III

THE KANCHEEPURAM CASES

The Rule of Law prevails in all democratic countries for solving disputes among the people, and in disputes between an individual and the State. The courts in India were established by the British rulers on the system prevalent in England. But, at the same time, laws were enacted adapting the local conditions prevailing in the society. As seen in the previous chapter, the East India Company, the settlers from England, were very reluctant to interfere with the Temple administration, and the Customs and usages prevailing in temples. But, gradually, as and when disputes arose, they had to be solved through mediation or intervention by the British Collector. After civil and criminal codes were enacted and courts were established all over the country, like all other civil and criminal cases, Temple disputes were also taken to courts.

Even after the establishment of such courts, the then English judges were very reluctant to try and decide the disputes in the Temples among the various groups trying to capture the Temple administration, since they thought that such disputes were not of Civil nature and therefore they had no power or jurisdiction to resolve the disputes. As existing in England or other European countries, there were no ecclesiastical courts in India, to resolve disputes related to the temple. Firstly, the English rulers and Judges could not quite understand the complex customs and usages, *Agama* rules etc. Secondly, they

did not want to antagonize any particular group of Hindus since they were in the process of firmly establishing their rule in the country. Thirdly, they thought that a Judge had no powers whatsoever to interfere with the administration of the temple. But, later on, the courts were constrained to hear and decide the disputes.

We are now concerned in this book only with certain disputes in the Srivaishnava temples pertaining to rituals, rights, powers and privileges of individuals, groups or sects and, in particular, disputes that arose in Kancheepuram Shri Devarajaswami temple. The disputes have been there for the last two hundred and fifty years and more and especially, among the two sects of Srivaishnavism Thengalais and Vadagalais. It is not my endeavour to deal with all the cases exhaustively since it is not possible or necessary. More importantly, we are concerned only with the principles of law relating to Srivaishnava temple disputes and as such, principles of law alone form the basis for my investigation and research in order to test their validity and relevance today. Necessarily, facts of each case have to be considered before culling out principles involved therein.

(1) Krishnasami Tatacharyar and others
Vs.
Krishnamacharyar and others[1]
(Judgement dated 1st May 1882)

The observations and findings in this case and the principles of law stated therein have been cited with

1. ILR 5 MADRAS 313 (DIVISION BENCH)

approval in several subsequent decisions, and therefore this is a case of great importance and significance.

The plaintiffs, who are Srivaishnavite Brahmins of the Thengalai sect, claim for the members of their caste and sect

(1) that they have the right of *Adhiapaka Miras* (right to recite Alwar's verses from time immemorial) in the pagoda (temple) of Sri Devarajaswami and seventeen other pagodas, and they assert that the *Thodakam* (commencement of Prabandha verses) appertains to that *Miras.*

(2) that the Mantram of their Sect, "*Sri Sailesa Dayapatram*"(in praise of the Acharya Sri Manavala Mamunigal), can alone be used in the ceremonial, that the defendants have invaded their office and disturbed their worship by introducing another Mantram, "*Ramanuja Dayapatram*"(in praise of the Acharya Sri Vedantha Desikar) and by joining in the *Sevakalam* (crucial time of worship), that the defendants have withheld payment of the income due to them as *Adhiapaka Mirasidars*

(3) that the defendants, the *Dharmakartas* of the pagoda and members of the Vadagalai sect, have refused them the honors and emoluments of the *Thodakagar*,(commencer) and

(4) that by reason of this denial and invasion of their rights, they have been lowered in public estimation, and the revenue they had formerly derived from voluntary contributions has, in consequence, been diminished.

They therefore instituted this suit in the year 1877. They prayed for an injunction restraining the defendants and other members of the Vadagalai sect from introducing their Mantram and taking part in the *Sevakalam* in connection with the ceremonial; they claimed to be entitled to conduct the *Prabhandam* both in the pagodas and in processions. They also prayed for a declaration confirming them in the enjoyment of the office to which they lay claim.

They sought to recover the value of the honors and incomes refused them which had accrued due prior to suit, or might accrue up to the execution of the decree, and damages for the injury sustained by the invasion of their office and refusal of their privileges, and they also claimed a mandatory injunction directing that the honors and income to which they asserted they were entitled should, in future, be rendered to them.

The plaint was rejected by the District Judge, as asserting claims which a Civil Court could not maintain, and the order of the District Judge was affirmed by the High Court; but the plaintiffs obtained special leave to appeal, and the Privy Council reversed the orders of the High Court and of the District Judge and remanded the suit for trial, saying that the civil court had jurisdiction to go into the dispute and decide.

The District Court, on remand, took up the trial. The defendants filed their written statements and they contended that,

(1) the right to the *Adhiapaka Miras* belonged to some only, and not to all the Thengalai Brahmins;

(2) that the office of *Thodakagar* formed no part of the *Adhiapaka Miras*,

(3) that these points had been already determined by judicial decisions,

(4) they denied that the honours specified in the Schedule and the income mentioned in Schedule appertained to the *Adhiapaka Miras*;

(5) they alleged that no other income was attached to that Miras than the emoluments mentioned in the Schedule ,

(6) that the plaintiffs were stopped from claiming any other honours or benefits by the omission to sue for them in former proceedings.

(7) that the plaintiffs had neglected their duties; and so not entitled to emoluments

(8) that much of the relief sought involved matters of religious ceremonial, with which a civil court could not deal

(9) that the damages claimed were not recoverable at law; and

(10) that by usage they were entitled to pronounce their own Mantram and to join the Prabandham

(11) that the suit is barred by law of limitation.

The trial court held on the main points in favour of the plaintiffs, and held in particular,

(1) that the claim for an injunction and declaration of right were Cognizable by the Civil court.

(2) that the Adhiapaka Miras, to which appertained the exclusive right to pronounce the Thodakam and the Mantram and to chant the Prabandham, was the common property of all the members of the Thengalai sect at Kancheepuram, and that these points had been determined by earlier judicial decisions.

(3) The defendants were not entitled to recite their own mantram and to join in prabandham.

In the ceremonial worship conducted at Shri Devarajaswami Temple, *Chinna* Kanchipuram, as in several other temples, in the very beginning, there is pronounced the "*Thodakam*", invitation to prayer, given by uttering the word "*Sadhiththarula*". This is followed by the Mantram or address to a spiritual Teacher and Sevakalam or chant of some verses from the Tamil hymns the *Nalayira Divya Prabhandam*.

[Mirasi:- The term 'Miras', which is of persian origin, refers to a right by inheritance over a share of the agricultural produce, as well as other privileges, either in virtue of a service or in virtue of a putative royal grant.]

The Srivaishnava Brahmin, who pronounces the *Thodakam*, is known as the *Thodakagar*. His office is regarded as one of considerable dignity and entitles him to

certain honours and emoluments etc. He also partakes of the emoluments of the Brahmins, who proclaim the mantram and chant the *Sevakalam*. It is admitted that the office and the emoluments of these assistants are known as the *Adhyapaka Miras.*

The High court, on appeal, observed as follows:-

"It is certainly not the duty of the Civil Court to pronounce on the truth of religious tenets nor to regulate religious ceremony; but, in protecting persons in the enjoyment of a certain status or property, it may incidentally become the duty of the Civil Court to determine what are the accepted tenets of the followers of a creed and what is the usage they have accepted as established for the regulation of their rights inter se".

The Bench observed further as follows:-

"There is clear evidence of a long-continued attempt on the part of the Vadagalais to introduce their particular Mantram into the ceremonial, and it is probable that the explanation of the contest respecting the Adhiapaka Miras lies in the opportunity afforded to the persons who take a ministerial part in its duties to introduce this Mantram. The Thodakam and the Prabhandam are common to both sects; it is in respect of the Mantram alone that these differences subsist".

The learned Judges proceeded to analyze the earlier disputes, which had subsisted between the rival sects almost uninterruptedly since the commencement of the 19th century.

The learned judges observed:

"But it also appears that for upwards of a century, the Thengalais had for the sake of peace conceded to a family connected by birth and creed with the Vadagalais the performance of the Thodakam, and they agreed to regard the officer as common to both".

"There is evidence to show that the members of both sects may join as worshippers in the Mantram and Prabhandam, but the Mantram above allowed is the Mantram, Sri Sailesa Dayapatram, and, in joining as worshippers, the Vadagalais have no right to invade the office of the Thengalai Adhiapaka Mirasidars".

The High Court finally held:-

"The decree of the Court of First Instance must be reversed in respect of the declaration that the office of Thodakam and its honors and emoluments belong to the Thengalais. The declaration that the Adhiapaka Miras, with the exception of the Thodakam, is the exclusive right of the Thengalais, and that it appertains to all the members of that sect residing at Kancheepuram, must be affirmed, and it must be declared that the Thengalais, are entitled to discharge the duties on all occasions in which the ceremony is performed, as well at the time of processions as at services in the pagodas, and the Vadagalai defendants must be enjoined to abstain from interfering with the Thengalais in the recital of the Mantram and Prabhandam otherwise than as ordinary worshippers. The decree must also be affirmed in respect of the claim

to the income of the Adhiapaka Miras, which accrued due within six years before suit, and in other respects the claim must be dismissed".

The above said Division Bench Judgement is a landmark case and the passages in the above decision have been quoted widely in several subsequent decisions of the High Court and the Privy Council.

(2) K.A. Veeraraghava Thathachariar and others

Vs.

T. Srinivasa Thathachariar and others[1]

(Judgement dated 26th April 1912)

The suit out of which Judgement was finally given by the High Court was one for the settlement of a scheme for the management of the Temple of Sri Devarajaswami Temple at Kanchipuram and the shrines attached to it.

The Judges at the very outset have observed that *"it has unfortunately been also the source of constant and bitter litigation for a very long period of time, not less than a century".*

The suit has been instituted by certain members of a group of family known as Thathacharis who were all said to be the descendants of one Koti Kanyakadanam Thatha Desikar, a famous scholar who was reputed to have been the priest of Shri Krishnadevaraya, the Rajah of the Carnatic (Vijayanagar). The original defendants were also the members of the same family.

1. 23 MLJ P 134 (DB

The case of the plaintiffs is that they had Dharmakarta Mirasi right, i.e., hereditary rights that belong to the family. But this contention was given up later.

When the appeal in the above matter was pending, Thengalai community people of Kanchipuram and *Sthalathars* (permanent residents) of the temple were added as respondents since, they already had filed suits in District Courts for framing a scheme. They prayed for appointment of additional trustees to safeguard the interest of Thengalai *Sthalathars.*

The two questions that arose were,

(1) whether the family of defendants 1 to 5 were entitled to exclusive rights to the trusteeship in the temple and

(2) whether additional trustee should be appointed to put an end to the constant and recurring quarrels and litigation connected with the Temple and to put the administration of the affairs on a satisfactory footing.

The observations of the Court are very important:

"The early history of the temple is involved in much obscurity. Both the sects of Vaishnavas, the Vadagalais and Thengalais, certainly possessed important interests in the Temple and they have given rise to persistent and unceasing litigation. Another fruitful source of disputes related to the rights of various persons holding offices in the temple, and the litigation between the trustees who have been Vadagalais and Thathachars from the year

1842 and the Vadagalai office holders, chiefly the Archakas and the Paricharakas, has been as acrimonious as the quarrels between the Vadagalais and Thengalais. The trustees have not been remarkable either for their capacity or for their spirit of co-operation. The Thathachar families have constantly tried to interfere in the management probably for good reasons. Both the trustees and the Thathachar families have frequently invited the co-operation of outsiders for the purpose of securing the orderly administration of the temple, but generally these attempts do not seem to have succeeded".

The findings of the Court are as follows:-

(i) *"The title of the family, if any, has been extinguished. It is not an ancient title, but one derived, if at all, only under the appointment of the Government in 1842. We are averse to the creation of any hereditary right to the office of a public trustee, as we do not think that such a course would be in the interests of the institution".*

(ii) "We are, however, of opinion that, having regard to the past management of the temple, it is desirable to provide some authorities to supervise the administration by the trustees. Several members of the Thengalai community hold offices in the temple, and the Thengalais as a body, have important interests connected with it. It has been decided that the invocation before the recitation of the Prabandham or Tiruvaimozhi in the Temple should be addressed to the Thengalai Saint

Manavala Mahamuni. The Thengalais possess the right to the Adhyapakam office. These rights led to long litigation between the Thengalai and Vadagalai communities"

"There is a shrine of Shri Manavalamahamuni within the precincts of the temple as well as a shrine of Nathamuni, the former of which is admittedly a Thengalai shrine and the latter is also claimed by the Thengalais as their shrine. The Thengalais own the right to good proportion of the Theertham offices.

Many of the namams in the temple are also Thengalai namams. The Thengalais have also the right of Asirvatham and a Thengalai is entitled to the office of Mulji Dharmakarta. All these have led to constant disputes and litigation between the communities and it is complained with reason that the fact all the trustees are Vadagalais, has tended to impede the vindication of the rights of the Thengalais and the Thengalai office holders.

The documents filed in the case clearly show that there is bitter enmity between the members of the Thengalai and Vadagalai communities in the place and each community has manifested a most reprehensible amount of unwillingness to recognize the just claims of the other community and of office holders belonging to it.

We have, therefore, considered it desirable in appointing a Board of supervision to provide that one of the members of the Board should be Thengalai gentleman not holding any office in the temple. There can be no

doubt that the history of the temple is one of incapacity, indifference and disharmony amongst the trustees. We have therefore, come to the conclusion that there should be a Board of Supervision consisting of 3 persons to be appointed by the District Court and that one of them should be a Thengalai, one a Vadagalai not belonging to the family of Thathachars, and one not belonging to either of these sects, namely, a Smartha or a Madhwa"

(3) Thirumalai Eachambadi Thiruvengadachariar and others

Vs.

Royadurgam Krishnaswami Thathachariar and others[1]

(Judgement dated 15th January 1915)

This suit was brought by the Plaintiffs (Thengalais) alleging that the only form of Adhyapaka worship in Sri Devarajaswami Temple at Chinna Kancheepuram and in all the shrines attached thereto whenever the Prabandham, i.e. the Tamil Veda, was recited in the shrines or in the processions of the deity, was the Thengalai form of worship, that is, by invoking the Thengalai saint at the commencement of the ceremonial by reciting "Sri Sailesa Daya Patram", which was followed by the recitation of the Prabandham and concluded by the Thengalai Thirunamam in honour of the Thengalai saint invoked at the beginning of the ceremonial. They allege that the exclusive right of carrying on this Adhyapakam worship rests with the

1. AIR 1915 Madras 877

Thengalai Brahmins permanently residing at Kancheepuram and if any other Srivaishnava Brahmin, whether a Thengalai or Vadagalai, wish to recite these prabandhams either within the temple or in the street, he could only join the Thengalai mirasdars, that is, residents of Kancheepuram, by invoking the Thengalai saint and following the lead of the Thengalai mirasdars; he must form a member of the congregation of the Thengalai mirasdars, and the Vadagalais were not entitled to form a separate goshti or congregation.

The defendants, the Vadagalais, on the other hand, contended that the form of worship was that prescribed by the Sastras common to all Brahmins; that, besides the Tamil Prabandham, recitations from other sacred works like the Vedas were also made and any person who was qualified for that purpose had got every right to take part in the different kinds of recitations at times of worship; the Thengalai Adhyapakam mirasdars were only the servants of the temple who were bound to recite the Nalayira Divya Prabandham in consideration of the emoluments which they receive from the temple, and this did not interfere with the rights of an ordinary worshipper to carry on the worship in his own way. They (the Vadagalais) had, accordingly, the right to invoke their saint by reciting Ramanuja Daya Patram before the prabandham which was common to both the sects; and they alleged that they had always been so reciting the mantram of "Ramanuja Daya Patram" as not to disturb the Thengalai Adhyapakam mirasdars while doing the service without any interference

by the Thengalais. They contended that they were entitled to form separate Goshtis of their own for reciting Prabandham in their own way and for invoking their own saint within the temple or outside it; and in order to avoid coming into conflict with the Thengalai Goshtis, they had been reciting their Prabandham during processions behind the idol, which was calculated not to lower but to enhance the sanctity of the service.

The District Judge decided that the permanent Thengalai residents of Kancheepuram were exclusively entitled to conduct the Adhyapakam service in connection with the ceremonial worship of the idol in the suit temple, that is, at the time of the puja and when the idol was taken in procession within or outside the temple, and on such occasions the Vadagalais might, if they chose to join the Thengalais, they must recite the same mantram i.e., the Thengalai mantram, and those portions of the prabandham which were recited by the Thengalais either in the temple or during the processions.

On appeal, the High Court considered the documents Exhibit A (of the year 1711), Exhibit B (of the year 1770) and Exhibit C (of the year 1774) and held that these three documents would show the existence of disputes before 1800 AD and the agreement between the parties that the Thengalai mantram alone should be recited in the temple.

The learned Judges proceeded to observe regarding the mantram "Ramanuja Daya Patram", that,

"It is plain that if this mantram could not be recited in the temple of Vedanthacharya (of Velakkadi temple), it could not be recited in any other temple"

"The decisions supported by the documents to which we have referred to place beyond all doubt that the Thengalais of Kancheepuram have got the Adhyapakam miras and that it consists of the rights of chanting the mantram of Srisailesa Dayapatram and also the exclusive right of reciting the usual Tamil Prabandhams inside the temple. That Srisailesa Daya Patram is the only mantram that is repeated. We are therefore of opinion that it is only the Thengalai mantram of 'Srisailesa Dayapatram' that may be recited within the temple during any ceremonial worship or by any goshti".

"During the puja period, that is from the commencement of the Puja to its end i.e., till the distribution of the theertham and the prasadam, the Vadagalai cannot repeat any prabandham of their own, but are only entitled to join the Thengalais as worshippers by reciting the same prabandhams which they recite".

"Any interference in the puja from its commencement with the ringing of the bells to its close with the distribution of the theertham and prasadam is, we have held, a violation of the plaintiffs' mirasi right. The processions are a part of the worship. Vadagalai cannot therefore form any goshti of their own and repeat any prabandham, which is different from that portion of the prabandham, which is being recited by the mirasdars.

The right of any individual Vadagalai to worship the deity without interfering with others by the recital of any appropriate mantrams or prabandhams etc. in a temple is very different from the right to form a goshti or congregation of his own sect and recite anything different from the prabandhams, which are recited by the mirasdars. The right to go in procession has now been recognized by a series of decisions in India and the right has also been upheld by the judicial committee of the Privy Council. The Thengalai are entitled to join Veda Goshti as ordinary worshippers, subject to the same restrictions as Vadagalais when they join the Prabandham gosti in front. This closes the procession. We are clearly of opinion that the intention in so doing is to make themselves as part in the worship of the idol."

After the above case was decided by the High Court, the aggrieved parties filed a petition in High Court praying for the grant of special leave (permission) to file an appeal to the Privy Council against the judgement and decree. The High Court rejected the petition on the ground that there was no substantial question of law of general interest involved in the case. This case is reported in

(4) Aiya Raghunatha thathacharyar and others
Vs.
Thirumalai Eachambadi Thiruvengadachariar and others
(Judgement dated 24th September 1915)

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1. AIR 1916 MADRAS 686 (2) Madras High Court Civil Miscellaneous pettions No.2161 of 1915

The learned Judges observed as follows:-

"Far from the question of general religious interest to the community, I am satisfied that the litigation is the result of the action of a small, though influential, faction of Vadagalai sectarians residing in Kancheepuram. The bigotry of this faction and the not less rigorous bigotry of a corresponding Thengalai faction in the same town have been responsible for the continuous Kancheepuram temple litigations, which never ceased from when it began about 60 years ago. The rights of general worshippers, if I may say so with respect have been fully safeguarded by numerous other decisions and have not been, in my opinion, affected by any of the observations found in the Judgement in question. It is only the claim of this faction among the Vadagalais to introduce innovations into the customary practices during the period of the regular official worship in the temple and into and within the organized processional body during the carrying on of the customary procession outside the temple and their attempts to create disturbance to the public peace that have been properly, if I may so, restrained by the Judgment".

"The contention of the applicants that they only rely on the rights of ordinary temple worshippers, and that they are anxious to safe-guard the rights of the general public using the public highways, seem to me to be patent pretences. It seems to me, therefore that no question of law of general interest is involved but only the

question whether the Courts should encourage the never sleeping ingenuity of a certain temple faction which is continuously inventing fresh sources of criminal and civil litigation and new ingenious ways of interference with the exercise of temple office rights and discharge of temple office duties vested in the mirasi temple office holders, who belong to the rival Thengalai sect".

(5) M. Appadurai Aiyangar (deceased) and others

Vs.

P.B. Annangarachariar and others[1]

(Judgement dated 13th September 1938)

This case held that the Civil courts in India had no ecclesiastical jurisdiction and they could not decide the question of rituals except in so far as the decision of such questions was a necessary ingredient in the decision of civil rights.

The Court observes: *"This appeal arises out of the interminable and deplorable disputes between the Thengalai and Vadagalai sects of Vaishnavite Brahmins worshipping in the Sri Varadarajaswami temple at Kancheepuram. "In Tatacharyar Vs. Krishnamacharyar[2] where the learned Judges set forth the ancient history of this dispute described the Adhyapakam service to which it related and decides the main basis upon which this service shall be conducted.... ....The first question was to consider whether a suit pertaining to ritual is one within the*

1. 1939 MLJ 124
2. 1882 ILR 5 Madras 313

cognizance of the Civil Courts. It is, unquestionable that the Civil Courts in India have no ecclesiastical jurisdiction and that they cannot decide questions of ritual except in so far as the decisions of such questions is a necessary incident for the decision of civil rights. It is well established that a right to worship in a particular temple is a civil right and that a right to perform a religious office to which obligations and emoluments are attached is also a civil right. It has been recognized that the Court in adjudicating on a right of worship or a right to a religious office not infrequently is obliged to decide incidentally questions of ritual but it follows that the Court will not on a mere pretence that a right to worship has been infringed, arrogate to itself a jurisdiction what it does not possess to prescribe forms of prayer, rights to religious precedence and questions of that nature. The civil courts, have neither the power nor the duty to attempt to draft a prayer book for this temple".

"To recognize any right on their part to stand in the front row of the congregation would be not only to afford to them facilities for impeding the performance of the Adhyapakam service by the mirasdars who have the right and the duty to lead it, but would be in effect be to lay down as a matter of right a rule of precedence in worship which the plaintiffs are under no obligation to perform and in which it has been established that they have no more a right to join as members of the general body of worshippers frequenting the temple. Owing to the

actions between the parties, the Magistrates have found it necessary to issue temporary orders prohibiting the Vadagalai from stationing themselves in the positions where their presence was deemed likely to lead to a breach of the peace. Those orders are justified by the paramount necessity to prevent disturbances.

A civil court cannot, in my opinion, be required to declare the right of the plaintiffs to stand in any, particular row of the congregation. Obviously, the mirasdars who have the duty to lead the service must be protected in the exercise of their duty. It has been recognized that the plaintiffs have the right to join in the service as ordinary worshippers without interfering in the conduct of the service by the mirasdars. It is an obvious exaggeration to suggest that the recital of prayers which are customary but peculiar to the officiating sect amounts to an obstruction of the plaintiffs' right of worship"

(6) V. Srinivasachariar

In re.

Thatha Desika Thathachariar and others[1]

(Judgement dated 24th March 1969)

In a suit to set aside an order passed by the Commissioner of the H.R & C.E, under S.62 of Madras H.R. & C.E. Act 1951, the plaintiff alleged that according to the tradition when *Sri Vedanta Desikar* was alive, he used to worship Lord Devarajaswami at Kancheepuram temple on his birthday, that it was the established custom and

1. 83 LW 407

usage to take the idol of *Sri Vedantha Desikar* on his birthday around the various shrines of *Alwars* and *Acharyas* and that the songs composed by *Sri Desikar* both in Sanskrit and Tamil would be recited in praise of the respective deities at the time of *Mangalasasanam* in the same way in which he would have done if he had been alive and that according to the long established usage and custom he and other Vadagalais were entitled to recite the Tamil compositions of *Sri Vedantha Desikar* at the time of Mangalasasanam in the shrine of Sri Devarajaswami and at all other shrines.

The contesting defendants resisted the suit and denied the custom and usage alleged by the plaintiff and stated that on the *Sathumarai* day, only Thengalai mantrams and *prabandhams* and *Vazhi Thirunamam* would be recited, that what the plaintiff wanted to establish was contrary to the decision in *Sthothrapatam* case reported in Bashiakar V. Thathachariar,[1] and that the plaintiff had no vested right even as a member of the Vadagalai community and that the suit was not maintainable. The Court held:

"Two aspects underlie the scheme of S.9 CPC. The first is, that a suit asserting a right to an office is a suit of a civil nature, and the second is that it does not cease to be one of civil nature, even if the said right depends entirely upon a decision of a question as to the religious rites or ceremonies. There is a further implication that

1. 20 MLJ 530

questions as to religious rites or ceremonies cannot be independent of such a right to an office form the subject matter of a civil suit. If the present suit were to be construed as one for a mere declaration of the plaintiff's right to recite-Desikar's Tamil compositions at the time of Mangalasasanam, it would be clearly not maintainable. In Subbaraya Mudaliar V. Vedantachariar,[1] *it has been pointed out that a right to recite sacred texts in a temple is a matter of ritual or ceremony in a religious matter with which a civil court has nothing to do. But, where the right to worship itself is denied, a suit to establish such an ordinary right would be a suit of a civil nature*-vide Kadirvelu Chetty V. Nanjundaiyar".[2]

In this suit, the plaintiff did not seek to establish any right to an office. All that he sougt to establish was that, on a particular occasion, the worship should be conducted in a particular form. This was purely a ritual and a suit to establish such a ritual was not competent under S. 9 of the CPC.

Held further, under the second part of S. 57 (c) of 1951 Act, the Deputy Commissioner was empowered to decide what the established usage of a religious institution was in regard to any other matter. The plaintiff sought to bring his case under this provision.

The intention of the legislature appeared to be to enable even a person having no benefit arising out of the

1. ILR 28 Mad. 23
2. 1916 2 LW 512

enjoyment or observance of the usage to seek an adjudication as to the established usage of the institution. In the absence of clear words limiting the scope of the provision, the plain language should be given effect to and it would not be permissible to import into the second part of clause (c), the notion that the dispute could be decided only if it is raised by a person having any pecuniary interest in the usage. As the language employed was general and comprehensive, it appeared though the plaintiff was not entitled to any emoluments or perquisites in the enforcement of the usage, he as an ordinary worshipper was entitled to institute the statutory suit for an adjudication as to the established usage in the institution; in this view, the suit was maintainable.

The Court held that:

"the custom and usage pleaded by the plaintiff are not true, and go directly counter to the decisions inter partes. The earlier decree makes it clear that during the pooja period, the Vadagalais are entitled duly to join the Thengalais Athyapakam goshti as worshippers and recite the same portion of the prabandham that is being recited by the Athyapakam mirasidars and that the Vadagalais are not entitled to recite their own mantrams and prabandhams during the pooja period"

In this decision also, the learned Judges have commented adversely on the existing regrettable state of affairs among the two sects of Srivaishnavites. They observed:

"Tolerance and mutual respect are the hallmarks of Hinduism and it is a pity that these two sects of Srivaishnavites who profess to be the followers of Great saints and savants are so intolerant against each other even in respect of small and unimportant rituals and ceremonies. We can only hope that the people belong to these sects would realize the futility of this kind of useless and wasteful litigation and stop their acrimonious fight".

(7) R. Thathadesika Thathachariar and another (Appellants)

Vs.

K.V. Alagia Manavala and others (Respondents)[1]

(Judgement dated 4th February 1992)

The matter relates to the marking on the forehead of the elephant during temple procession. The Thengalai community sought a mandatory injunction asserting that the elephant maintained by the temple was meant for use by that sect alone to the exclusion of Vadagalai sect. This claim was refuted by Vadagalai sect. It claimed that it had a right to use the elephant of the temple and paint its forehead with its own distinctive mark. The Thengalai sect had been successful throughout in all the courts below, including the High Court and obtained requisite injunction.

But, however, since the temple elephant was dead, and another one had not been procured by them, the

1. 1995 Supp (4) Supreme Court Cases 563

Supreme Court passed an interim order on May 20, 1980, and it is as follows.

> *"The Court feels that it is reasonable to permit two elephants - one painted with Thengalai Namam and another painted with Vadagalai Namam - to lead the procession side by side on festive occasions pending disposal of the appeal. The appellants shall provide the elephant to be painted with Vadagalai Namam and the respondents (plaintiffs in the trial court) shall provide an elephant to be painted with Thengalai Namam. The interim order made in the above terms shall be in force during the pendency of the appeal. This order is made without prejudice to the respective contentions of the parties and the final decision in the appeal. The Executive Trustee shall carry out this order. The local police is directed to give necessary protection to the parties and to ensure that this order is carried out without any disturbance. This order shall be communicated telegraphically at the cost of the respondents to the Executive Trustee of Shri Devarajaswami Devasthanam Temple and to the Superintendent of Police, Kancheepuram."*

The Supreme Court, finally disposing of the case, observed:-

> *"This order, reportedly, has worked without any friction between the two sects for the last 12 years. The Executive Trustee, presumably, has carried out the above orders to the satisfaction of all concerned.*

Since we have decided to make the above interim order of this Court the basis of the final decision in the instant appeal, we have consulted learned counsel for the parties for any variation therein. On consulting them, we have come to the view that instead of the elephants being placed side by side on festive occasions, the procession should be headed by the elephant of the Thengalai sect followed by the elephant of the Vadagalai sect and, thereafter, the procession shall be as it has been per custom and tradition with the usual paraphernalia. Thus, on this basis the appeal is partially allowed by modifying the judgement and the decree of the High Court defining the placement of the respective elephants of the two sects in the festive procession and other ceremonials.

It is further directed that the temple is no longer under any obligation of maintaining any elephant of its own or for the exclusive use of the Thengalai sect, as the two sects shall now be required to maintain their own elephants for being employed in the worship and ceremonials. Be it ordered accordingly with the rider that should the temple at any stage come to acquire an elephant, that elephant be rotationally put for ceremonial use by the two respective sects; the period of rotation being annual, and further should the temple come to acquire two elephants, then one elephant each shall be kept allocated to the respective sects for the purpose aforementioned.

It is, however, made clear that the procession shall be headed, as said before, by two elephants and not more than two elephants. The Executive Trustee shall be responsible to carry out this order finally passed. When fixing the rotation, he will start with the Thengalai sect. The parties shall bear their own costs throughout".

The Supreme Court has not, however, considered the case on merits or reversed the findings of the courts below, but only for the purpose of maintaining peace and amity during processions, the order was modified.

In most of the cases pertaining to Kancheepuram disputes between Thengalai and Vadagalai, the Thengalai relied upon certain ancient documents in the legal proceedings. The earliest record relied upon by them, was of the year 1711 AD.[1] This would show that worship in the temple was prevailing according to Thengalai mode. The Mantram recited was "Srisailesa Dayapatram" in honour of the Thengalai Guru Shri Manavala Mamunigal. It appears that towards the close of the 17th century, the chief idol of Lord Varadaraja Swami was carried to Udayarpalayam for fear of Mohammedan invasion. In 1710 AD, the idol was brought back and reinstalled in the temple by a great and learned Thengalai vidwan, a sanyasi by name "Athan Thiruvenkata Ramanuja Jeer". Subsequently, the Sthalathars and one Lala thodar Maulji, a Chieftain under a Mohammedan prince by name Sadullakhan,

1. OS 10 of 1906 (known as ATHAN JEER AGREEMENT) District Court, Chenglepet.

conferred the management for proprietorship on the said Athan Jeer. Only then, the above said agreement of the year 1711 AD came into existence. At that time, one Eadur Immudi Lakshmi Kumara Thirumakai Thathachariar was allowed to receive priority of honours (agrathamboolam) in the temple at the instance of Athan Jeer and thodar Mulji because the Thathachariar was an influential priest (Royaguru) of the Vijayanagara kingdom and certain benefits to the temple were expected of him.

But this was done on condition and on the definite undertaking given by the Thathachariar that he would honour the Thengalai mamool and respect and venerate the great Thengalai Acharya, Manavala Mamunigal by chanting or causing to chant, his mantram or thanian "Srisailesa Dayapatram" at the commencement of all religious ceremonies not only in the temple but also in his own private house and thus maintain the Thengalai tradition of the temple as of old. What was given to Thathacharyars was not the temple management or trusteeship of the temple, but only the priority of honours. There were several other documents filed in the earlier cases.

There were many disputes regarding the "Namams"; and they were taken to courts. For example, in respect of the Namams of "Noothukkal Mandapam" or hundred pillars Mandapam of the temple, there were cases and the Civil Judge Mr. Dowdeswell visited the spot on two occasions and based his decision on this personal inspection also,

and the decision went in favour of Thengalais. There were also other cases relating to Namam disputes.[1]

In the OS 30 of 1956, para 20, sub-court Chenglepet, the learned Judge observed:

"The history of litigation shows that when one controversy is solved by judicial decision, another controversy arises, as a Sphinx (sic) from its ashes, to help the flame of eternal disputations".

In O.P.8 of 1940, District Court, Chenglepet, Mr.P.N. Ramaswamy, (who later became Judge of the High Court of Madras), while referring to the scheme framed by the High Court in AS 212 of 1909,

"The scheme framed by the High Court with such full patience and labour has unfortunately proved to be an unqualified failure. The scheme had to be worked, not by reasonable people, in a spirit of compromise but by veteran litigants consistently described by all persons who have had to decide those matters as being, "inspired by Sectarian rivalry and animosity", to whom every judgment of the District Court has been only a furlong stone and every Judgment of the High Court has been only a mile stone in the long road of litigation the end of which no one can see".

He attributes three causes for the failure of the scheme:

1. The character of the trustees who actually administered the temple, as referred to above.

1. OS 14 and 15 of 1850, District Court, Chingleput

2.The non-representation of the Thengalais and the stalathars in the Trusteeship, and

3. The "effete"(ineffective) nature of the Board of Supervision.

The Thathacharyars of Kancheepuram established their claim to the office of the "Manthra Pushpam" in a suit against the Vadagalai archakas of temple,[1] to which the Thengalai were not parties. This office is part and parcel of Thiruvaradanam or pooja performed by the Archaka or Poojari as a daily routine of the temple ceremonial, and done individually by a mirasdar in every temple. It is at best a supplement to the Archaka's office to make it more pious, serene and effective, and in no temple done as a congregational service or in any ostentatious manner.

In respect of "Manthra Pushpam" matter, action was taken by the Thengalais before the Deputy Commissioner, Hindu Religious and Charitable Endowments Department in 1954 in OA No.203 of 1954, after some preliminary ordeals both with the temple trusts board and the Endowment Department. The Deputy Commissioner dismissed the application of the Thengalais on some technical grounds, but the Commissioner, Hindu Religious and Charitable endowments, on revision, remanded the case to the Deputy Commissioner for decision on merits. On this, the Thathachari (Honorary Trustees) filed a writ petition (WP.242 of 1956) for quashing the Commissioner's order of remand. After an elaborate enquiry, the writ petition was

1. OS No.8 of 1899 District Court, Chenglepet

dismissed by the High Court. The Honorary Trustees again preferred a writ Appeal, which was also dismissed. The cases, OA No.203 of 1954 came up for enquiry by the Deputy Commissioner who upheld almost all the contentions of the Thengalais by the order dated 8.3.1961.

All the above disputes of Kancheepuram temple establish the regrettable state of affairs that existed there between the two sects. Fortunately, for the last few years, there have not been many disputes. But, nevertheless, in the interest of the temple and for the benefit of the devotees, the temple should be lifted to its pristine glory.

ANALYSIS

Facts and circumstances of any two cases cannot be identical, and there will always be distinguishing features in them. But, what we are concerned here is to find out the principles of law established in the above cases, so that, the validity and relevance of these decisions in the present day context can be tested in view of the Constitutional provisions (in particular Articles 25 and 26), the State enactments like Hindu Religious Charitable and Endowments Act and other changed situations.

Now, let me therefore in a nutshell state the principles of law established in the above seven cases of Kancheepuram Sri Devarajaswami Temple:

1. It is not the duty of a civil court to pronounce on the truth of religious tenets, or to regulate religious

ceremonies. But, however, in protecting persons in the environment of certain status or property, it is the duty of the civil court to determine what are the accepted tenets of the followers of a creed, and what is the usage they have accepted as established for the regulation of the rights inter se.

2. No action would lie in a court of law for the loss of emoluments arising from voluntary gifts nor in respect of the honours alleged to have been withheld but, a claim as of right to certain dues for services performed is maintainable.

3. All sects are entitled to use the public streets for processions.

4. The rights of the parties depend upon custom and practice.

5. None should be allowed to introduce innovations into the customary practices during the period of the regular official worship in a temple and into and within the organized processional body during the carrying on of the customary procession outside the temple. Any attempt to create disturbance to the public peace will be restrained by the order of the Court.

6. The courts will not encourage Civil or Criminal litigation and new ingenuous ways of interference with the exercise of temple office rights and discharge of temple office duties vested in the Mirasi temple office-holders.

7. The Civil courts in India have no ecclesiastical jurisdiction and they cannot decide questions of rituals

except in so far as the decision of such question is a necessary incident to the decision of civil right. The right to worship in a particular temple is a civil right and that the right to perform a religious office to which obligations and emoluments are attached is also a civil right. Incidentally, the questions of ritual could be gone into by the Court, but it has no jurisdiction to prescribe forms of prayers, rights to religious precedence and questions of such nature.

8. The claim to establish that on a particular occasion, the worship should be conducted in a particular form is not competent under Section 9 of CPC, since this is purely a ritual and a suit to establish such a ritual is not competent under the said section. The Deputy Commissioner is empowered to decide what the established usage of a religious institution is in regard to any matter. Though a person is not entitled to any emolument or perquisite in the enforcement of the usage, he, as an ordinary worshipper, is entitled to institute the statutory suit for an adjudication as to the established usage in the institution.

ஸ்ரீ பார்த்தஸாரதி பெருமாள், திருவல்லிக்கேணி

CHAPTER - IV

DISPUTES AND SOLUTIONS - FROM OTHER TEMPLES

PART-I: TRIPLICANE CASES

There were several disputes relating to Shri Parthasarathy Swami Temple, Triplicane, between 1878 and 1925 A.D., and the continuous interaction between the temple and the Anglo-Indian judicial system has features of both local and comparative interest. About seventeen legal suits were decided in the High Court of Madras during this period.

The nine court cases fought between 1878 and 1916 were about demarcating the sectarian basis for temple control and the machinery of election for trusteeship. The second phase, which runs from 1916 to 1925, is dominated by the structural fragmentation of the community into legally defined interest groups.

The first major case decided by the High Court of Madras was Vencatanarayana Pillay Vs. Secretary of State for India in council.[1] This was a fight for the post of trusteeship between two factions of Thengalai Srivaishnavites of Triplicane. Earlier, there was a bureaucratic charter of 1843, whereby, the filling of vacancies in the trusteeship was 'to be left to the suffrage of the community of the Thengalai sect, as has heretofore been customary'.

1. CS 486 of 1878 High Court, Chennai

Justice Muthusamy Iyer, who delivered the Judgement on 24th February 1880, gave the above said 1843 bureaucratic charter a fresh legal lease of life, to leave the election of trustees to the 'suffrages' of the Thengalai community of Triplicane and that the 'contest in this suit is whether the appointment is in accordance with the custom indicated by government'. The learned Judge had observed that the custom was 'to leave it to the Thengalai community to name a qualified person to the Collector who is to express an opinion whether the person named was duly qualified, and if several persons were named, which of them was most eligible, and for the Board finally to confirm the nomination'.

The Learned Judge also held that "*the appointment (of V. Raghavachari) is bad and because it was made in contravention of the usage of the institution and in improper assessment of a right which has no legal basis*"

Thus, in the above case, the custom and usage in the temple, was the basis of the judgement.

In another case,[5] the judges formulated a scheme for the management of the temple. Members of Triplicane community were explicitly invited to participate in the case through a proclamation in Tamil and Telugu, which was displayed in and around the temple. After receiving model schemes from the parties in the suit, Justice Hutchins published his own authoritative scheme on the 7th November 1885. This scheme and the elections based on

1. CS 36 of 1884, High Court of Judicature at Madras

it, led to a flurry of efforts on the part of various groups to carve out a niche for themselves in the three trusteeships and in the electoral process that governed access to them.

After a judicial decision that upheld the position of a saivite headman, there was further appeal by one V. Raghavachariar and the High Court of Madras finally upheld the position of the said Brahmin trustee (Thengalai).[1]

This landmark judgement, which excluded non-Thengalai from any role in the electoral process, was the first major legal demarcation of the boundaries of the Thengalai community of Triplicane. This far reaching decision, and the legal proceedings that led up to it, laid the basic foundation for the enduring relationship between the temple and the High Court of Madras.

In a subsequent case,[2] the Plaintiffs belonging to different castes attempted to have some kind of temple control. In the written statement, the trustee claimed that the court would have to make some decision on the question of Vysya Monopolies over a trustee position, because the question of "the several castes and sub-castes which should be represented on the management of the temple of Shri Parthasarathy Swami in Triplicane is not capable of discussion on the strength of any well established or binding usages in the past".

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1. Judgement in OSA 24 of 1889
2. A. Condiah Chetty v.V. Raghavachariar, CS 161 of 1891, High Court of Madras.

Justice Best's final scheme of 1894, which remained substantially unaltered for the next twenty-five years, made a few key alterations in the previous scheme, but adhered to it in much of its detail. It did not alter the previous scheme in the matter of the caste of trustees. As for the other qualifications for the trusteeship, a property qualification was introduced. The age of voters was raised from eighteen to twenty one years, and in the crucial matter of clarifying the boundaries of the Thengalai electorate, the judge left it to the trustees to decide who are the members of the Thengalai sect, the phrase "Thengalai persuasion" in the 1885 scheme being altered to "Thengalai sect". Lastly, the obligation of the surviving trustees to consult caste headmen was completely expunged, and it was also reiterated that only Thengalai headmen were entitled to be present at the receipt and counting of votes.

Elections steadily became the opposite of what the courts intended them to be. Instead of being instruments of order, regularity and participatory democracy, they were more often than not, unruly and violent affairs.[1]

Conflicts between trustees and their adherents, acted out in bitterly fought elections and extended court cases also began to have an increasingly direct effect on the ritual and re-distributive process of the Temple, with the issue of honours at its center. In 1905, the death of V.

1. "Worship and conflict under Colonial rule" – A South Indian Case - by Arjun Appadurai

Raghavachariar, the Brahmin trustee, led to conflict between the surviving trustees, P.M. Appaswamy Pillay and P. Rajarathnam Naidu, and the family of the deceased trustee.

The three major suits that occurred between 1910 and 1916, although vacancies in the trusteeship and contested elections continued to provide the backdrop for temple politics, conflicts between trustees more explicitly centered on the detail of the day-to-day management of the temple as an economic and administrative entity. In CS 176 of 1915, the two-non-Brahmin trustees were opposed to the Brahmin trustee, V. Parthasarathy Iyengar.

The later seven suits involving the Triplicane temple were fought between 1916 and 1925.

Parthasarathy Iyengar v. Appaswamy Pillay,[1] occupied the attention of the court from 1918 to 1925 and was filed by three Thengalai Brahmin voters against the temple trustees; Vijayaraghava Mudaliar Vs. Ranganatham Chetty[2] was filed by some non-Brahmin worshippers against the temple trustees; Venkatanarasimha Bhattachariar V. Parthasarathy Iyengar,[3] was filed by one section of the priestly lineage at the temple against the trustees and the other section of the same lineage; Ranganadham Chetty V. Parthasarathy Iyengar,[4] which was

1. CS 111 of 1918, High Court of Madras
2. CS 843 of 1919, High Court of Madras
3. CS 860 of 1920, High court of Madras
4. CS 559 of 1922, High Court of Madras

resolved in 1923, was a suit by one of the trustees against his co-trustees; Venkatanarasimha Bhattachariar V. Parthasarathy Iyengar,[1] which was settled by compromise in April 1925, was another suit by one section of the priesthood against the trustees; Anna Rangachariar V. Parthasarathy Iyengar,[2] which was finally adjudicated in November 1925, was a suit brought against the trustees to establish the rights of those Thengalai Brahmins who recited the Prabandham poems in the daily service at the temple (the adhyapakas); and finally, Viraraghavachariar Vs. Parthasarathy Iyengar,[3] was filed by some Brahmin "worshippers and voters" against the trustees and was settled by the final formation of a new scheme for the governance of the temple in December 1925.

Some of the important points of the final scheme fixed by the High court were:

"The establishment of a Board of Supervision, also elected, with extensive powers of supervision over the trustees; the restriction of the tenure of trustees to five years; the (implicit) shrinkage of the electorate by insisting on literacy as well as a cash fee for participation in elections".

There were five groups of individuals in the structural tensions, and they all had or aspired to, systematic shares in temple control. They were (1) The

1. CS 442 of 1923, High Court of Madras
2. CS 349 of 1923, High Court of Madras
3. CS 527 of 1924, High court of Madras

trustees (2) The priests (3) The Adhyapakas (Brahmin hymnists) (4) Non-Brahmin voters and worshippers and (5) Vadagalai residents of Triplicane.

A passage from the judgement delivered by Mr. Justice Madhavan Nair, Mr. Justice Kumarasamy Sastriar and Mr. Justice Srinivasa Iyengar in Viraraghavachariar Vs. Parthasarathy Iyengar[1] is worth quoting in this context.

"In this connection we may take leave to observe that it is highly regrettable that trusteeships of temples and similar institutions should be looked upon as places of prestige and profit and that people should be found who are desperately anxious to be elected to such places or to continue to stick to them in spite of the onerous and serious responsibilities thereof. The true spirit in which such offices should be accepted or retained is the spirit of service and sacrifice in the interests of the public and of the institutions. So long as such offices are regarded not as posts of duty and responsibility but as opportunities of personal aggrandisement the affairs of such institutions are bound to be unsatisfactory".

In Venkatanarasimha Bhattachariar V. Parthasarathy Iyengar and Venkatanarasimha Bhattachariar Vs. Parthasarathy Iyengar,[2] the conflict between the sub-sections, stimulated by legal codification, provided the background for serious conflicts between the priests of the PERIYA MURAI and the trustees, who were themselves

1. Judgement, May 1 1925, in CS 527 of 1924, High court of Madras
2. CS 860 of 1920 and CS 442 of 1923 respectively

thoroughly factionalised. However, the above suits ended in compromise.

The codification of the rights of the sets of the two sets of priests, as well as of their prerogatives with respect to the trustees, achieved in these cases provided a charter and stimulus for such conflict throughout the 1930s, 1940s and 1950s.

The "Adhyapakas" claim for the rights and privileges was made in Anna Rangachariar Vs. Parthasarathy Iyengar[1]

"From time immemorial the Thengalai Vaishnava residents of Triplicane have been interested in and have had rights of control over the temples of Sri Parthasarathy Swami in Triplicane and the plaintiffs and other Thengalai Srivaishnava adult male Brahmins have under the title of Sthalathars by immemorial right and long enjoyment been entitled to the mirasi offices of (1)Adhyapakam (2)Arulapadu (3) Puranam (4) Vedaparayanam (5) Kattiyam in the temple... and to receipt of perquisites, emoluments and honors as set out in Schedule A and to perform the duties as set out in Schedule B hereto"[2]

It was asserted that the trustees have the authority over adhyapakas in respect of the recitation of Prabandhams and Vedas.

The court found the largely negative evidence on behalf of the adhyapakas considerably more persuasive

1. CS 349 of 1923
2. Plaint April, 27 1923. in CS 349 of 1923, para 5.

than the evidence cited by the trustees, and accordingly, the judgement and decree in this case were highly favourable to their interest. This decree was reaffirmed in the final scheme for the overall management of the temple, ratified by the Court in Viraraghavachariar Vs. Parthasarathy Iyengar.[1]

During the proceedings in Anna Rangachariar Vs. Parthasarathy Iyengar (the adhyapaka case) and in Viraraghavachariar Vs. Parthasarathy Iyengar (the final "scheme" suit), there were three attempts by Vadagalai residents of Triplicane to enlist legal help in advancing their cause. Given the complete failure of these attempts, only three points of interest are revealed by the evidence. First, that some of the trustees might have encouraged Vadagalai attempts to interfere with the ritual process as a way of defusing the growing power of the Adhyapakas, who represented the height of Thengalai exclusivity. Second, the use of the past by the Vadagalai litigants to make their case was fascinating; they attempted to legally legitimize the use of the verse beginning with the words "Ramanuja Dayapatra" at the commencement of Prabandham recitation. The point of interest is the decisiveness of the judges of the High Court of Madras, who flatly rejected all Vadagalai claims to any systematic role in the control of this temple. This is the most eloquent testimony to the complete victory of the concept of "Thengalai control" over this temple by 1925.

1. CS 527 of 1924, High Court of Madras

After the passage of the final scheme in Viraraghavachariar V. Parthasarathi Iyengar, in which monetary and literacy requirements for the voters were legally incorporated there was an attempt to move the case to the Privy Council in England, but the appeal was rejected, and the scheme suit in 1924, became binding for the entire community.

The net analysis of the discussion of the Triplicane cases is as follows:-

(1) The control of Sri Parthasarathy Swami temple by Thengalai Vaishnavites was given concrete legal expression by Courts.

(2) Secondly, a series of tensions within the community were legally stimulated, involving the rights and relationships of trustees, priests, adhyapakas, non-brahmins and Vadagalais

(3) Every legal attempt to resolve temple disputes in this period was a cure addressed to symptoms and not to causes. So much so, every act of codification, which temporarily satisfied one set of litigants became a stimulant to another set of individuals to bid for similar set of codification of their rights.

(4) The subordination of temple disputes to a set of general rules codified by the Judicial solutions, which were constantly re-fixed through accumulated precedence, encouraged native litigants to formulate their own concerns in increasingly sophisticated legal terms.

மலையப்பன் (திருவேங்கடமுடையான்), திருமலை

And, of course, there appear to be still litigations pending in the Courts, of which I have no right to comment. But, it is sufficient to say that so long as a temple has worshippers who pour in money, and so long as there are properties, privileges and honours attached to temples, there will be endless litigations.

PART-II **THIRUMALAI CASE**

Privy Council

His Holiness Peria Kovil Kelvi Appan Thiruvenkata Ramanuja Pedda Jiyyangarlu Varlu

Vs.

Prathivathi Bhayankaram Venkatacharlu & Others[1]

The above case relating to a group of 18 temples decided certain issues raised by the two sects of Srivaishnavites, Thengalais and Vadagalais as to their rights in the performance of Prabandha sevakalam and the recitation of Stotra-padams in respect of the Adhyapakam office in the Thirumalai Thirupathi temples.

The question was whether the Thengalais had the exclusive right of conducting the sevakalam, insisting that only their mantrams (Srisailesa Dayapatram) should be recited at the beginning of the service. The High Court of Madras held inter-alia that the evidence supported the view that the practice was that the Vadagalai manthram was used by Vadagalai side by side with the Thengalai Mantram before the recitation of the Prabandham. Against

1. 1947 ILR 436 (Privy Council)

this decision, the appeal was filed before the Privy Council.

While narrating the history of the disputes, their Lordships of the Privy Council observed as follows:-

"After the fourteenth century, there appears to have arisen a difference of view among the Vaishnavas. One section, the followers of Vedanta Desikar, specialized in the study and exposition of the Sanskrit Vedas and regarded the Alwars and their Prabandhams as entitled to less reverence. These became known as Vadagalais, or followers of the Northern cult. The other section, the followers of Manavala Mamuni, specialized in the study and exposition of the Tamil Prabandhams of the Alwars and became known as Thengalais, or followers of the Southern cult. It is important to bear in mind that both derive from and share a common religious origin and faith, and that while each adheres to its own school of thought, neither of them condemns or rejects the sacred character of the other's cult".

The Appellant, His holiness Peria Kovil Kelvi Appan Thiruvenkata Ramanuja Pedda Jiyyangarlu Varlu, known as Pedda Jeengar, the High Priest of the temples is the President of the Adhyapaka office. He is assisted in the performance of his duties by Chinna or Junior Jeengar, four "Ekangis", and certain minor assistants called Adhyapakas and Acharyapurushas. These with the general body of ordinary worshippers when met in assembly constitute the Adhyapaka Ghosti or congregation.

Their Lordships observed about the Pedda Jeengar,

"there is now no question as to the authoritative and predominant position occupied by the Appellant".

The Vadagalai Srivaishnavites did not challenge the right of the Appellant and the Thengalai worshippers to recite their own mantram and their own guru (Sri Manavala Mamuni) at the beginning of the service or to conduct their worship throughout according to their own ritual. What they contended was that the right of the Thengalais was not exclusive and that the Vadagalais had a concurrent right to recite simultaneously their own mantram and to observe their own ritual where it differed from that of the Thengalais.

On the other hand, the Thengalais did not dispute the right of the Vadagalai worshippers to be present and take part in the services, but they maintained that if the Vadagalai attended the services, they must conform to the Thengalai ritual or remain silent, and in any event, that the Vadagalais had no right to interfere with the Thengalai service by using simultaneously their own ritual where it differed.

Their Lordships of the Privy Council observed:

"The success of the Vadagalai claim would not seem to conduce to the orderly and reverent conduct of the temple service ....The observing of their own ritual in competing with the Thengalai ritual had led to disturbances...So far as their Lordships are aware, there has hitherto been

no instance of Judicial establishment of a right on the part of the Vadagalais and the Thengalais to using competitive rituals simultaneously at the service in a temple".

The important observation of their Lordships is

"The rights of the parties depend upon Custom and practice".

This is in line with almost all other cases decided in the temple disputes.

Their Lordships discarded the oral evidence, but relied only on the documentary evidence, as consented to by both sides and observed:

"In a matter of this nature, where feeling is easily inflammed, little reliance can be placed on the oral testimony of partisans on one side or the other..."

A vast mass of documents and records of litigations has been accumulated. It has been exhaustively analysed and criticised both by the subordinate Judge who heard the case in the first instance and the Judgement of the High Court with the result that, on the main question of the use of Mantram or invocation, the sub-ordinate Judge decided in favour of the Appellant (Thengalai) and the High Court in favour of the Vadagalai respondents.

One of the vital documents is Exhibit A of the year 1795, a portion of which is quoted below:-

"Having been made to learn that it was wrong to recite Ramanuja Dayapatram in the temple, they went

away making an agreement that, if necessary, they would in future do so in their own respective houses as was done in Thirumalai and Tirupati, but not in the temple, and that if they should so recite it they would be rendering themselves culpable".

Their Lordships of the Privy Council considered this document and observed:-

"This document has been produced in other proceedings and accepted as genuine. The subordinate Judge states that it is 'beyond the reach of criticism', and their Lordships are not impressed by the adverse comments made upon it in the High Court. The point of the document for the present purpose is that, it records so long ago as 1795 A.D that it was not permitted to recite Ramanuja Dayapathram in the Thirumalai and Tirupati temples. It is also important, as will appear in the sequel, in that it recognised identity of practice as between the temple at Tiruchanoor and the Thirumalai and Tirupati temples, which are mentioned in association in a number of documents".

Their Lordships discussed about another litigation regarding the Tiruchanoor temple in 1887-93. In that suit, filed by Pedda Jeengar of Tirumala Tirupathi and others, the Learned Munsif held that the practice in the temple at Tiruchanoor was identical with the practice in the temples of Tirumalai and Tirupathi and expressly found that:

"the members of the Vadagalai sect are not entitled to utter the Vadagalai manthram called 'Ramanuja

Dayapathram' jointly with the Thengalais or separately, but that the Vadagalais are at liberty to utter it in their own houses but not before the Goddess".

On appeal, the District court of North Arcot, confirmed the decision of Munsif as in accordance with *"the custom sanctioned by old usage".*

On further appeal, the High Court affirmed the Judgements of the Courts below and observed as follows:-

"It is alleged that they (the vadagalais) have great respect for the Thengalai saint in whose honour the verse is recited, and they only want the religious privilege of being able to recite their own verse in the presence of the Deity. It appears to us that this professed respect for the saint is accompanied by a good deal of hostility to the saint's worshippers, and that the permission could result in nothing but a breach of the public peace. All the evidence goes to show that by established custom the Ramanuja Dayapatram should not be recited and we think the decision of the Courts below is correct".

Their Lordships of the Privy Council also referred to the Kancheepuram case reported in Krishnaswamy Thathachary Vs. Krishnamacharya and others,[1] and discussed in the previous chapter of this book. Their lordships observed:

"There had been a series of other litigations between Thengalai and Vadagalais relating to other

1. ILR 5 Mad.313

temples elsewhere in which the same issue was contested. The report of a case affecting the great temple at Kancheepuram is particularly instructive. The suit was brought to restrain the Vadagalais from introducing their manthram in the temple service. The claim of the Vadagalais to do so was asserted, as in the present case, to be justified by usage. After a full investigation, the exclusive right of the Thengalais to the use of their manthram in the services was established".

The Privy Council also refers to cases relating to temples at Tirunelveli reported in Srinivasa Thathacharyar Vs. Srinivasa Iyengar and Srinivasa Iyengar Vs. Srinivasa Thathacharyar.[1] In the said case, it was held by the High Court, affirming the Judgement of the sub-ordinate Judge that the Vadagalais were not entitled to interfere with the Thengalai ritual and must not repeat their Ramanuja Dayapatra at the beginning or their Vazhi Thirunamam at the end of the services. The High Court observed:

"Now, judging from the instances of dispute between Thengalais and Vadagalais which have come not infrequently before the courts in connection with other temples, the rule seems to be that but one pathram is used on similar occasions".

The Privy Council also considered the decision reported in Thiruvengadachariay Vs. Krishnaswamy Thatha chariar[2] and Appadurai Iyengar Vs. Annangarachariar,[3] which are already discussed in the previous chapter.

1. (1899) 9 MLJ 355 2. 1915 MWN 281 3. (1939) MLJ 124

The facts of the case decided by the Privy Council reveal that the troubles originated in and about the year 1901 in an assertion by the Vadagalais of their alleged rights. In May of that year, the Superintendent of the Tirupathi temple, complained to the Mahant (Matadhipathi) that the Vadagalais, contrary to the custom of the temple, were 'newly' reciting their own Mantram and that disputes were generally increasing. A further complaint was made in 1904 and the Mahant made a representation to the local Magistrate that there was a risk of disturbance owing to the insistence of the Vadagalais in employing their own ritual contrary to usage. In 1905, this matter was taken to court by Thengalais. The sub-ordinate Judge of North Arcot found in favour of the joint use by each sect of its own mantram, but, his judgement was reversed by the District Judge of North Arcot. He held:

"Upon the evidence, I must find that it has not been the custom to recite the Ramanuja Dayapatram".

On a further appeal to the High Court, the action was dismissed as a technical plea of mis-jointer of parties without any opinion being expressed on the merits. Then, the present suit was filed before the sub-ordinate court of Chittor.

Their Lordships of the Privy Council then considered various documents filed in the case and observed:-

"Their Lordships are much more impressed by the fact that, so far as they are aware, in the whole series of litigations in Madras on this vexed question the Vadagalais

have in no instance succeeded in establishing a right to the joint use of both mantrams in any temple, and that nowhere in the documents is there definite evidence of such joint usage".

It was vehemently argued that to forbid the Vadagalais to recite their own mantram in the temples would tantamount to excommunicating them altogether from the services.

Their Lordships of the Privy Council, observed that:

"*The learned judges (of the High Court) very properly take note of the admitted and undoubted right of the Vadagalais to participate in the services in the temples*", proceeded to observe, "***In point of fact the right to participate in the worship of a temple does not necessarily carry with it the right to insist on using a ritual other than the ritual in use in the temple.*** *The reported cases consistently recognise the right of the Vadagalais to participate in the worship of temples conducted according to the Thengalai ritual, but on condition of conforming with, or at least not interfering with, the Thengalai ritual and it is nowhere suggested that this is a barren or self-contradictory privilege".*

The learned Judges of the High Court belittle the probability of disturbance or unseemly incidents if both manthrams are used simultaneously. But no one can read the papers in this case or the Judgements in the other reported cases without noticing the frequent references to disturbances between the rival sects when each has

insisted on using its own ritual. **Where feelings obviously run so high, the risk of violent conduct is manifest.** It may be that the nature of the services is such that both parties could recite their respective manthrams without very great mutual interference, but as the District Judge of North Arcot observed in one of the cases-

"Knowing the contentious spirit of the opposing factions, I am afraid there would never be peace between them".

Regarding other temples involved in the above case, Their Lordships held that the appellant had established the exclusive right of the Thengalais to use their own Mantram in all the other temples in suit.

Their Lordships further held:

"that the Thengalais are entitled to open the service with their own manthram alone, and that the Vadagalais are not entitled to recite their Manthram concurrently, but are satisfied, in the absence of any sufficient evidence to the contrary, that the service must also be concluded by the recitation of the Thengalai Vazhi Thirunamam alone".

In so far as the right relating to Stotrapadam is concerned, their Lordships held that "*By parity of reasoning their Lordships, having taken a contrary view as to the use of the Vadagalai Manthram, should 'in the light of the probabilities' come to the opposite conclusions from*

the High Court as to the Stotrapadams. But they do not regard this as a legitimate method of disposing of the matter and, accepting the view of the High court that there is no reliable evidence to enable the custom of the sects to be ascertained, they do not propose to make any finding on the subject".

As regards the conduct of processions inside and outside the temple, the Thengalais claimed that the Thengalai ritual should be exclusively observed both in the service inside the temple and in the processions inside and outside the temples. The Vadagalai respondents did not submit any arguments for differentiating in this matter between the case of the service inside the temples and the case of procession inside and outside the temples. Their Lordships of the Privy Council held that their decision should extend to both cases alike.

Finally, Their Lordships allowed the appeal, and decree of the High Court of 18th March 1937 was varied so as to read as follows:-

(i)That the Plaintiff or any of his deputies, Chinna Jiyyangar or any of the four Ekangis is exclusively entitled in the temples mentioned in the plaint and in processions both inside and outside the said temples to commence Prabanda Parayanam by saying "Saditharula" and to go on with the Thengalai patram to the exclusion of the Vadagalai patram.

(ii)That the plaintiff is exclusively entitled to the headship of Adhyapakam Miras.

(iii)That the Vadagalais except the Dharmapuris, Kotikannikadanams and Thomalais (in Tirumalai) are not entitled to the Adhypakam office in the plaint temples.

(iv)That the plaintiff and the other Adhyapakam office holders have the right to close the Prabandham recital.

The decision of the Privy Council, conclusively established certain rights of the Thengalais and the Pedda Jeengar as detailed above. Three important aspects of the case are:

(1) In matters of temple disputes regarding rituals, the court will rely upon established custom and practice only.

(2) The right to participate in the worship of a temple does not necessarily carry with it, the right to insist on using a ritual other than the ritual in use in the temple.

(3) The Court, in such matters, would also consider whether the peaceful atmosphere in the worship of deities, inside or outside the temple, would be disturbed by adopting one course of action, and if so, in order to avoid the disturbances and maintain peace and order, the Court would pass appropriate orders.

PART-III SRIRANGAM CASES

There is a long history of sectarian conflicts in respect in the rights of Sri Ranganatha Swami Temple, Srirangam. This has been elaborately discussed in an

அழகிய மணவாளன் (நம்பெருமாள்), ஸ்ரீரங்கம்

essay titled "Sectarian conflicts within Srivaishnavism: Thengalais and Vadagalais in the Kaveri Delta, C1800-1900 by Shri G. Oddie".[1] Therein, it is stated as follows:-

"In fact, the most intensely bitter and socially disruptive sectarian feuds among Hindus in nineteenth century Tamil society were not between Srivaishnavites and Saivites, but were within the Vaishnava or (Srivaishnava) movement itself - between the vadagalais or 'northerners' and tengalais or 'southerners'. According to M. Monier Williams, who visited South India in 1883, these two sects within the Srivaishnava movement were 'far more opposed to each other than both parties are to saivas' and the same observation was made by others."[2]

For the purpose of discussion on the subject taken for research, it is sufficient to mention only one case decided by the High court:

(1) P.R. Aiyanachariar And Others - Appellants

Vs.

Sri Uthamanambi Sadagopachariar And Others - Respondents[3]

This is a batch of five appeals arising out of five suits, three by Vadagalai Srivaishnavite Brahmins and two by Thengalai Srivaishnavite Brahmins, for certain declarations and injunction in regard to the famous Sri

1. Bakthi Studies Edited by G.M. Bailey, I. Kesarcodi – Watson.
2. India Office Records (IOR) p/383 kristnyar (town munsif or Trichinopoly) to collector, 6.7.1872, Hindu, 21st January 1899.
3. AIR 1939 MADRAS 757

Ranganathaswami Temple at Srirangam. The District Judge of Trichirapallai considered all these cases to be of religious nature and dismissed all of them on the ground that they were not of civil nature and were thus barred by Section 9 of Civil Procedure Code. Both the parties appealed to the High Court.

The two points considered by the High Court are:

(1) Do the allegations contained in these suits pertain to matters which are civil in character? and;

(2) if so, are they barred either by Section 92 CPC or Section 73 Madras Religious Endowments Act?

Under Section 92 CPC, a provision relating to public charities, a suit can be instituted only after sanction by the Advocate General.

Section 9 CPC States:-

Courts to try all civil suits unless barred.-The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation I.- A suit in which the right to property or to an office is contested is a suit of a civil nature notwithstanding that such right may depend entirely on the decision of questions as to religious rites of ceremonies.

[Explanation-II- For the purposes of this section, it is immaterial whether or not any fees are attached to the

office referred to in Explanation I or whether or not such office is attached to a particular place].

Section 73 of Madras Hindu Religious Endowment Act (2 of 1927) relates only to religious endowment which term contemplates property and does not include a deity which according to Hindu law is something more than property and cannot be said to be owned by any particular class of Hindu or Hindus generally.

The learned judges of the Divisional Bench, considering section 9 of CPC observed as follows:-

"It is fairly apparent that questions regarding rituals or ceremonies alone could not be adjudicated by Civil Courts if they were not essentially connected with what may be stated to be civil rights of an individual or individuals. It may be stated in the end that a suit complaining against an infringement of a right including that of worship would ordinarily be presumed to be within the competence of a Civil court, unless it has been shown not to be so by those who rely on the exception, the rule as stated above being to the contrary"

In one of the suits filed by the Thengalai sect,[1] it was prayed for declaration that the order passed by the Devasthanam committee authorising the receipt of the ornaments with Vadagalai namam as an offering and permitting them to be placed on the Goddess on the day on which they were presented was 'ultra-virus' (beyond

1. OS No.2 of 1933

the powers of) and illegal as being opposed to usage and tradition. The High Court observed:

> *"Whether a particular deity is adored with a particular ornament on a particular day is surely a matter of ritual and have nothing to do with a civil right....It is only frivolous to allege that by adoring the deity with the presented ornaments for a day, the Thengalai character of the temple would be affected".*

In the next suit by the Thengalai sect,[1] the plaintiffs alleged that at the time of the daily 'Thiruvaradhanam (food offerings), and other occasions, the plaintiffs and members of the Ghosti (assembly) only have the right to recite the Vedam and are entitled to certain incomes and honours on account of their being members of the Ghosti (assembly) holding the temple Vedaparayanam Miras office, but this has been questioned by the followers of Vadagalai sect.

The High Court held:

> *"These allegations are, in my opinion, sufficient to bring the plaintiffs' claim within Sec 9, Civil PC. They not only allege a right of worship which they state in the plaint to have been infringed but they further claim the right to an office as well as to its emoluments, which would clearly bring the matter within the cognizance of a Civil Court. The learned District Judge appears to have overlooked the plaintiffs' allegation that their right of worship was infringed and their claim to the office with*

1. OS 3 of 1933

certain emoluments was denied. Moreover, the members of the ghosti claim to be some kind of office-holders in the temple and are thus entitled to have their grievance ventilated in a Civil Court. The plaintiffs in this suit are trying to enforce their rights as office holders and would thus not fall within the ambit of either S.92, Civil P.C. or S.73, Religious Endowments Act."

The next suit by Vadagalai sect[1] is significant. The prayer was for declarations that the trustees of the temple have committed breach of trust

(1) in putting or causing to be put any namam or mark other than the thilaka to Mulavar, Sri Ranganathaswami, and

(2) in putting or causing to be put new or additional Thengalai namams or marks to the idols in and about the temple and in several articles and things thereof.

The plaintiffs in the above suit alleged that the act of putting a namam on the Godhead is highly sacrilegious, that the prayer to the God is rendered inefficacious and the trustees of the temple have no power to introduce unshastriaic innovations.

On the above points, the High Court observed as follows:-

"Although an attempt has been made in the plaint to show that this act of the trustees would seriously affect the plaintiffs' right of worship, I have arrived at the

1. OS No.4 of 1933

conclusion after a careful consideration that this is a pure matter of ritual based on usage and must be held to be barred by S.9, Civil P.C. The attempt to characterize the practice of putting namams on the God's head as illegal appears to be due to the fact that the predominant character of this temple happens to be Thengalai and it is highly distasteful to the Vadagalais to see the Gods they worship alongwith thengalais bearing the latter's marks. Had they been on the contrary adorned with vadagalai marks instead of thengalai marks, the so called sacrilege would never have been, one feels, made a ground of attack".

The High Court therefore held that this part of the claim is not cognizable by civil court and must be dismissed.

The other part of the claim for Vadagalai sect in the suit is that a very serious attempt is being made on behalf of the followers of Thengalai sect to introduce their own namams on temple properties with a view to alter the character of the temple.

The High Court observed:

"There is no doubt that the plaint, as pointed out by the learned District Judge, was drafted with an eye on the decision reported in 30 Mad. 158,[1] but this would not in any way detract from the value of the plaint or the seriousness of the allegations contained in it. An attempt

1. Krishnaswami Iyengar v. Samaram Singarachariar, (1907) 30 Mad 158 = 17 MLJ 1.

to alter the character of the temple by erasing the namams of one sect or by adding the namams of another sect in order to throw the namams of the other into oblivion or atleast to reduce them to such an insignificant proportion that they may be almost ignored has been held in 30 Mad.158 to be an allegation which would be cognizable by Civil Courts and I respectfully concur with the expression of opinion contained in that judgement. I therefore, have no hesitation in holding that this allegation of the plaintiff is cognizable by a Civil court. If this were all, the plaintiff would be entitled to have this suit remanded. But the learned judges however, held that the suit, although a civil nature must be dismissed as it was filed without the requisite sanction under Section 92 CPC".

The next suit filed by Vadagalai sect[1] was for a declaration that the plaintiffs and other Vadagalai worshippers are entitled to worship the idols of Shri NADAMUNIGAL and Shri VEDANTA DESIKAR and for their being carried in procession on the occasions and in the manner specified in the Schedule of the plaint and permitting them to participate according to Mamool in the festival of Shri Ranganathaswamy on the said occasions and receiving the customary honours and perquisites with consequent injunction. The High Court held that it is an ordinary right of a citizen to worship according to his own belief, any deity or god as he chooses to do and therefore it is a right

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OS No.6 of 1933

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[1] OS No.6 of 1933

of a civil nature, but, however, this suit also should be dismissed for want of proper sanction under Section 92 CPC.

It was also observed by the High Court that: "*It is a fundamental rule that the civil courts of the land shall try suits of civil nature, but a suit does not cease to be one of a civil nature because in order to decide it the Court has to decide questions as to religious rites or ceremonies.*

Section 9 CPC enacts a rule which is very simple to state but difficult to apply....When rights of religious worships become inter-twined with religious ritual or religious tenet, the question presents the utmost difficulty".

In the above appeal, His Lordship Mr. Justice Venkata Subbarao, delivering a separate Judgement observed as follows:-

"*It is alleged that neither the Vadagalai nor the Thengalai namam should be placed on the godhead itself, for the namam represents the foot of God. Under the cloak of this claim, the vadagalai plaintiffs seek to get removed the thengalai namam admittedly adorning the forehead of the deity. It is said that according to the Shastras it is an act of sacrilege to place a namam of the God head. It would be a fruitless task to attempt to enquire what the ancient Shastras prescribe; indeed, the adherents of the rival sects may argue endlessly about the meaning of a particular text. In such cases, as has been often observed, the only safe guide is usage*

Subbaraya Vs. Chellappa[1] *and Krishnaswamy Iyengar Vs. Samaram Singarachar. It is not denied that the present contention is opposed not only to the traditional usage of the Srirangam temple but of several celebrated shrines in South India. In my opinion the claim is a frivolous one and to allow it to be tried would amount to an abuse of the process of the Court. Moreover, the matter is at best one pertaining to religious ritual and as such is excluded from the cognizance of a civil court. The appeal, so far as it related to this claim, therefore fails".*

The learned judge also observed: "*What is meant by the expression 'matter pertaining to the administration of a religious trust?' On the one hand, this must be distinguished from the matters of ritual and on the other from the individual right of worship. To decide where the line is to be drawn is not infrequently attended with considerable difficulty.* ***In great Hindu temples with their innumerable sub-shrines and minor idols and multiplication of ceremonies, settled religious observances get established by usage and tradition.*** *There are many such observances and it is wrong to treat every observance, irrespective of its character, as involving a question of right of worship or to treat it as a matter of ritual".*

The above case emphatically illustrates the bitter fight between the two sects Thengalai and Vadagalai in the courts of law as to their respective rights and

1. (1882) 4 Mad 315 & (1907) 30 Mad. 158 respectively.

privileges in the matter of rituals, namams and other religious practices.

The above said judicial solutions of Temple disputes establish the fact that the Courts heavily depended upon the proved customs, usage and practices prevailing in the respective temples for deciding the issues.

But, however, a new era in the field of law had dawned with the coming into force of the Constitution of India, which is the basis of all the laws of the country. That is, no state or central law could be enacted in violation of the express provisions or the spirit of the Constitution, and, if enacted, such law would be declared illegal and void. Therefore, whenever a state made an enactment to have a grip and control of the administration of temples or mutts, thereby affecting the rights of the trustees, Archakas, Madathipathis etc., there were a spate of litigations questioning the validity of such a law.

Therefore, one must have basic knowledge as to what the relevant constitutional provisions are, and what changes those provisions have brought about in respect of rights, duties and privileges pertaining to religion and temples. First, the most important provisions of the Constitution will be examined and then, a few landmark judgments by the Supreme Court interpreting those provisions of the Constitution will be considered and discussed in detail.

CHAPTER - V

THE CONSTITUTION OF INDIA & RELIGION

The basic law for every legal activity in our country is the Constitution of India framed by eminent Jurists and scholars after Independence and it came into force with effect from 26th January 1950.

While, in England, there is no written Constitution and the nation is guided only by unwritten but healthy conventions, most of other democratic countries all over the world observing the Rule of law for the administration have written constitutions.

The Pre-amble of our Constitution is as follows:-

"WE, THE PEOPLE OF INDIA, have solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY OF THOUGHT, EXPRESSION, BELIEF, FAITH AND WORSHIP;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION".

In so far as religion is concerned, the preamble assures liberty of thought, expression, belief, faith and worship.

The word 'LIBERTY' in the context is given a very wide connotation by American decisions as including not only freedom from bodily restraint, but also the right of the individual to enter into contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized as common law and essential to the orderly pursuit of happiness by free men.

The most important Chapter in the Constitution is Part III dealing with "FUNDAMENTAL RIGHTS", which are regarded as essential for any free society. The trend of the modern democratic thought is to include Fundamental Rights in the Constitution, since the preservation of certain basic human rights against state interference is an indispensable condition of a free society.

The insertion of Fundamental Rights in the Constitution is a deliberate departure from British ideas and, in this regard, our Constitution makers have mainly adopted the American model.

In so far as religion is concerned, there is no provision in the Indian Constitution similar to that in the American Constitution prohibiting the establishment of a religion by law. But, still, there is no state Religion in

India. The Religion of the majority of the people in India is not given any special protection. All religions are given equal protection.

Prior to the Constitution, under the Government of India Act 1935, there was an ecclesiastical department. Now, there is no such department.

The tradition of Religious neutrality and non-interference in the religious affairs of Indian people is a very old tradition of British rule in India dating from the time of Warren Hastings. This aspect was discussed in Chapter II to some extent.

The policy which has been adopted in our Constitution is one of non-interference with any religion in the state and equal treatment to all religions.

For example, as already discussed in the previous Chapter, the question as to whether a particular Namam or Mark should be placed on the God's head is at best one pertaining to religious ritual and as such is excluded from the cognizance of a civil court.[1]

The Indian Constitution has been modelled on the basis of the most modern ideas in this respect, namely, the Civil authority and the Civil bond among the citizens are disassociated from their religion.

As stated by Bombay High Court,[2]

"It is the policy of state to protect all religions, but to interfere with none".

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The doctrine of equality of religions does not import as a function of the state the obliteration of the differences between several religious systems. The doctrine means only equality in the matter of freedom to profess and practice any religion.

The most important provisions of the Constitution pertaining to religion and worship, Articles 25 and 26, run as follows:-

ARTICLE-25

(1) Subject to Public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-

(a) regulating or restricting any economic, financial political or other **secular activity which may be associated with religious practice;**

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I- The wearing and carrying of Kirpans shall be deemed to be included in the profession of the Sikh religion

Explanation II- In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a

reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

ARTICLE-26

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

As seen above, the freedom of religion under Article 25 and the freedom of any religious denomination to manage its own affairs in matters of religion under Article 26 are not absolute rights, but conditioned by the over-riding considerations of public order, morality and health.

A distinction has to be drawn between pure matters of belief or faith and overt activities by way of expression, exercise and propagation of that faith. A pure matter of belief or conscience can, in the nature of things, be subject to no control by state. But, with regard to overt activities, which are the expressions of religious faith, the

state has power of intervention in the interest of public order, morality and health.

The use of force or fraud in making conversions from one faith to another would be a practice opposed to both public order and morality, and the state may (or should) take suitable steps to control or put down such activities.[1]

Similarly, the banning of religious processions on the ground of apprehension of breach of peace will be quite justified as being required in the interest of public order.[2]

Section 295A of Indian Penal Code makes it a criminal offence to deliberately and maliciously outrage the religious feelings of any class by insulting its religion or religious belief. This law is held to be not unconstitutional even though the offensive acts which are made punishable are done by way of religious propaganda and as such may claim protection under this Article if the law is not transgressed.[3]

The freedom of religion under Article 25 is subject to other provisions of Part III relating to Fundamental Rights. For example, Article 17 of the Constitution abolishes untouchability and prohibits its practice in any form. The Article further provides that the enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

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1. 1957 MPLJ 1(37) DB (NAG)
2. 1968 CRLJ. 1519
3. AIR 1957 SC 620 (Ramji Lal Vs. State of UP)

The question whether any class of persons should be admitted to the precincts of a religious institution or a temple or which part of the temple should be open to any class of persons is a matter of religious practice and religious usage. Hence it is a matter in regard to which freedom is guaranteed by this Article and Article 26 to the followers of every religion except in so far as the Constitution provides for any limitation being placed on such freedom.[1]

In this Judgement, Justice Venkataramaiyer explains how such questions are governed by the Agama Shastras and religious usages and traditions.

In State of Bombay Versus Narasu Appa Mali,[2] Chagla C. J., observes as follows:-

"Now a sharp distinction must be drawn between religious faith and belief and religious practices. What the state protects is religious faith and belief. If religious practices run counter to public order, morality or health or a policy of social welfare upon which the State has embarked, then the religious practices must give way before the good of the people of the State as a whole".

Two principles emerge from the above discussion:-

(i) So far as a person's beliefs are concerned, there is an absolute protection, and in spite of the fact that Article 25 clubs together "freedom of conscience" and the

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1. AIR 1958 SC 255 (264,265)= 1958 SCR 895 Venkataramana Devaru v. State of Mysore
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other rights, namely, the right to profess, practice and propagate religion and the whole provision is prefaced with the words "subject to public order" and so on, in the nature of thing, no restriction can be imposed by the State on what is a mere matter of belief.

(ii) In so far as beliefs find expression in overt acts and practices, the jurisdiction of the State to control such expression is undeniable where such control is necessary in the interests of public order, morality and health.

The freedom guaranteed by Article 25 includes, by necessary implications, from the phrase "freedom of conscience, freedom of agnosticism (believing that nothing can be known of the existence or nature of God) and Atheism, and not only freedom for belief in religion or God."[1] Even superstitious belief cannot be controlled in anyway.

Articles 25 and 26 of the Constitution refer to practices which are integral part of religion.[2]

No one can be forced to accept by reason of any custom the ministrations of particular priests at religious ceremonies against his will. Any custom which infringes the freedom of religion guaranteed by this Article (Article 25) is void.[3]

Polygamy or bigamy is not a practice based on religion among Hindus and its prohibition does not affect the freedom of religion.

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1. AIR 1958 SC 255 (268) Venkataramana Devaru Vs. State of Mysore
2. AIR 1963 SC 1638 Govindlalji Vs. State of Rajasthan
3. AIR 1951 HP 32

Under Articles 25 and 26, right to propagate religion is guaranteed. A Matadhipathi, by virtue of his office, has to do the duties of a religious teacher. It is his duty to practice and propagate the religious tenets of which he is an adherent and if any provision of the law prevents him from propagating his doctrines, that would affect the religious freedom guaranteed under Articles 25 and 26.[1]

The right guaranteed under Article 25 is an individual right, while the right guaranteed under Article 26 is the collective right of a religious denomination or sect as such.[2]

The meaning of Denomination as given in Webster's Dictionary is "A collection of individuals, classed together under the same name, especially a religious sect or body having a common faith and organisation and designated by a distinctive name."[3]

Article 26 contemplates not merely a religious denomination but also a section thereof.[4]

The right under Articles 25 and 26 is given to all *persons* including aliens.

The above summary in respect of Articles 25 and 26 of the Constitution is for the purpose of basic knowledge as to one's legal right in respect of religion and will help

1. AIR 1954 SC 282 (289)(SIRUR MUTT CASE) Commr. HR&CE, Madras Vs. Shri Lakshmindra Thirtha Swamiar.
2. (1969) 2 mys L.J. 23 (45)
3. AIR 1961 SC 1402 (Durgah Committee, Ajmer Vs. Syed Hussain Ali)
4. AIR 1961 SC 1402 (1415) as referred to in Basu's Constitution of India vol.II page 473.

and facilitate every person to assert, before leaping into never ending litigations, any right in respect of temples.

Articles 27 and 28 are also important and are reproduced below:-

Article 27.

No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

Article 28.

(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (I) shall apply to an educational institution, which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the state or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

In the following pages, certain landmark judgements of the Supreme Court interpreting the provisions of the Constitution, particularly Articles 25 and 26 are examined.

CHAPTER - VI

THE SUPREME COURT CASES

It is very important to bear in mind, the approach of the highest court of the land, namely the Supreme Court of India, in matters relating to religious service in temples, the rights of the office holders in temples etc. interpreting the relevant provisions of the Constitution of India, which is the basic law of the land.Only then, it would be possible to critically analyse the Court decisions pertaining to the Kancheepuram temple already referred to.

(1) A.S. Narayana Deekshitulu

Vs.

State of A.P. and others[1]

The Supreme Court gave the finding that Sections 34 and 35 of A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 abolishing hereditary rights of *Archakas* and other office holders are not violative of Articles 25 and 26 of the Constitution.

Section 34 of the impugned Andhra Pradesh Act states as follows:-

"34. Abolition of hereditary rights in Mirasidars, Archakas, and other office holders and servants –

1 (a) Notwithstanding anything in any compromise or agreement entered into or scheme framed or sanad or grant made or judgment, decree or order passed by any

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court, Tribunal or other authorities prior to the commencement of this Act and in force on such commencement, all rights, whether hereditary, contractual or otherwise of a person holding any office of the Pedda Jeeyangar, Chinna Jeeyangar, a Mirasidar or an Archaka or Pujari or any other office or service or post by whatever name it is called in any religious institution or endowment shall on the commencement of this Act stand abolished;

(b) Any usage or practice relating to the succession to any office or service or post mentioned in clause (a) shall be void;

(c) All rights and emoluments of any nature in cash or kind or both accrued to and appertaining to any office or service or post mentioned in clause (a) and subsisting on the date of commencement of this Act, shall, on such commencement stand extinguished.

(2) Every office-holder and servant mentioned in clause (a) of sub section (1) holding office as such on the date of commencement of this Act shall, notwithstanding the abolition of the hereditary rights, continue to hold such office or post on payment of only such emoluments and subject to such conditions of service referred to in sub-sections (3) and (4) of section 35".

Section 35 of the Act, consequently, provides procedure for appointment of office-holders, servants etc.

It was argued on behalf of the Archakas and Jeeyars as follows:-

There is nothing in the Act to show that it was enacted in the interest of public order, morality and health, which alone are relevant factors to restrict freedom of religion or religious practices guaranteed by Article 25(1) of the Constitution. The State cannot, under the pretext of making secular law, regulate or restrict activities, which are integrally associated with religious practices.

Vaishnava archaka cannot be transferred to and posted even in another similar Vaishnava temple situated elsewhere as no two temples perform same ceremonies and rituals in the same order. The Pedda Jeeyangar and Chinna Jeengar are religious heads and importance of their office was judicially recognized by the Privy Council. Therefore, their offices cannot be abolished under the Act. A Brahmachari cannot be appointed as an archaka, which is antithesis to the Agama Shastra. There is voluminous evidence of prevalence of the hereditary system in different states and those states have not abolished the system. The decision of Supreme Court in Seshammal Vs. State of Tamil Nadu[1] apart from the leading judgment in Commissioner, Hindu Religious Endowments Vs. Sri Lakshmindra Thirtha Swamiar of Shri Shirur Mutt[2] were cited before the Supreme Court (these decisions are to be discussed later).

As against the above said arguments, the Senior Counsel for the State contended that the Act made a

1. (1972) 2 SCC II: (1972) 3 SCR 815
2. 1954 SCR 1005: AIR 1954 SC 282

clear distinction between matters of religion and religious practices and secular activities of a religious institution or endowments. Sections 13, 23 and 142 of the Act have taken care to preserve all the existing religious usages, practices and sampradayams as valid. Apart from preserving them, the Act mandates the officers not to violate these practices. The Act seeks to regulate only the administration and maintenance of secular part of the religious institutions or endowments. The Act however does not affect any honour to which any person including archaka or Jeengars are entitled by custom.

The Act does not interfere with the performance of any religious worship or ceremony, nor does it object to any religious institution's functioning according to the Sampradayams and Agamas followed by them.

The Supreme Court, after considering the above said arguments on either side, held that the Constitutional provisions protect only integral or essential part of religion whereas non-integral and non-essential part of religion, being secular in character, can be regulated by the legislation as done by the Andhra Pradesh Act. The essential or integral part of religion is to be ascertained from the doctrine of that religion itself according to the tenets, historical background and change in evolved process.

The Supreme Court observed:-

"There is a distinction between religious service and the person who performs the service; performance of

the religious service according to the tenets, Agamas, customs and usages prevalent in the temples etc. is an integral part of the religious faith and belief and to that extent the legislature cannot intervene to regulate it. But the service of the priest (archaka) is a secular part. The hereditary right as such is not an integral part of the religious practice but a source to secure the services of a priest independent of it. Though performance of the ritual ceremonies is an integral part of the religion, the person who performs it or associates himself with performance of ritual ceremonies, is not. Therefore, when the hereditary right to perform service in the temple is terminable by an owner for bad conduct, its abolition by sovereign legislature is equally valid and legal. Regulation of his service conditions is sequenced to the abolition of hereditary right of succession to the office of an archaka".

The Supreme Court held that:

"while performance of religious service is integral part of Religion, priests or Archakas performing such service, is not so. When, historically, the erstwhile king had authority to appoint and terminate Archaka, being secular functions, legislature is equally competent to abolish the hereditary rights to succession of Archakas. Archaka is only a holder of office in the Temple and subject to discipline and control. Hereditary succession of Archaka is not religious usage and hence not covered by Article 25(I). Preservation of custom, usage, practice, ceremonies, pujas etc. under provision of Andhra Pradesh

Act would not affect the power to abolish the hereditary office. Determining eligibility of Archakas on the basis of the competence instead of on the basis of the particular family, Sect or denomination is also not violative of Article 25(1).

Articles 25 and 26 deal with and protect religious freedom. Religion as used in these articles must be construed in its strict and etymological sense. Religion is that which binds a man with his Cosmos, his Creator or super force. Essentially, religion is a matter of personal faith and belief of personal relations of an individual with which he regards as Cosmos, his Maker or his Creator which, he believes, regulates the existence of insentient beings and the forces of the universe. Religion is not necessarily theistic."

The learned Judges of the Supreme Court while discussing the two forms of worship, the Pancharatra and Vaikanasa, observed that, in Thirumalai Temple and the temples in Tirupathi and Thiruchanur,

"Jiyars (Monks of the Ramanuja school) took charge of the Balaji temple, where the services were performed by Vaishnavas of that school. Yet, Puja to Balaji (Sri Venkateswara swami) in the Sanctum Sanctorum continues to be done by the Vaikanasa according to the Vaikanasa Shastra which is purely in Sanskrit".

"The protection of Articles 25 and 26 of the Constitution is not limited to matters of doctrine. They extend also to acts done in furtherance of religion and

therefore they contain a guarantee for rituals and observances, ceremonies and modes of worships which are integral parts of the religion. In Seshammal case[1] on which great reliance was placed and stress was laid by the counsel on either side, this Court while reiterating the importance of performing rituals in temples for the idol to sustain the faith of the people , insisted upon the need for performance of elaborate ritual ceremonies accompanied by chanting of mantras appropriate to the Deity. This also recognised the place of an Archaka and had held that the priest would occupy place of importance in the performance of ceremonial rituals by a qualified archaka who would observe daily discipline imposed upon him by the Agamas according to tradition, usage and customs obtained in the temple."

The main controversy in the case is only of hereditary succession of an archaka. The question is whether abolition of hereditary rights to perform such service is proper since the right is claimed to be an integral part of religion.

It was argued by the counsel for Archakas that the Supreme Court in Sirur Mutt case[2] had held that the doctrine of a particular religion or usages and practices would include food and dress, priest being an inseparable part of the Agamas without whom the ceremonial temple worship would not start, archakas become part of idol worship and a part of religious practice and therefore, the

1. 1972 2 SCC II: (1972) 3 SCR 815
2. 1954 SCR 1005: AIR 1954 SC 282

abolition of hereditary right to perform ceremonial worship by the priest would be an affront to matters of religion offending Articles 25(1) and 26(b) of the constitution. It was contended that in Seshammal case[1] what was upheld by the court was the doing away of the line of succession on hereditary basis but not hereditary right itself. The Supreme court had upheld hereditary right as such and given acceptance to legislative sanction to doing away with the line of succession to hereditary descendant from the same family and gotra. On the other hand, the counsel for the government contended that the office of archaka is not done away with. Archaka is an important employee of the temple to conduct daily rituals and ceremonies in accordance with the Agamas, customs, practice or Sampradayams prevalent in the temple concerned. His service is akin to that of any other employee of the temple. The hereditary right offends Article 14, 15(1) and (2) and 16(1) of the Constitution. (Equality before law etc.)

The learned Judges did not approve of the arguments on behalf of the Archakas, but proceeded to find out whether appointment of the Archaka is governed by usage and whether hereditary succession is a religious usage. The learned judges held that:

"Though after appointment, as an integral part of daily rituals, he performs worship in accordance with the Agama Shastras, it is no ground to hold that his appointment is either a religious practice or a matter of religion.

1. 1972 2 SCC II: (1972) 3 SCR 815

It is not an essential part of religion or matter of religion or religious practice.Therefore,abolition of the hereditary right to appointment under Section 34 is not violative of either Article 25(1) or 26(b) of the Constitution.

It is true that the position of the office of Pedda Jeengar or Chinna Jeengar as a religious head in the context of mathadhipathi of Ramanuja sect was upheld by the Privy Council, yet as regards his right in the Lord Venkataramana Temple, he performs the office as a nominee and, therefore, he also owes his existence to the nomination which is antithesis to hereditary succession. Every mirasdar or Gamekar equally cannot claim hereditary right to continue to perform the duties from generation to generation. They all are servants or members of the establishment liable to disciplinary jurisdiction. Consequently, they stand along with the priest (archaka) of the temple of Sri Balaji. It is true that hereditary rights of archaka or other office-holders are in vogue in most of the State Acts and no.attempt therein appears to have been made to abolish them, yet, their inaction or omission to amend the law is no ground to hold the legislature lacks the power to do so or that they are in violation of the Constitution. Therefore, abolition of the hereditary right to appointment under Section 34 is not violative of either Article 25(1) or Article 26(b) of the constitution."

The learned Judges further observed: ***"The signs and symptoms of dharma are that which has no room***

for narrow mindedness, sectarianism, blind faith, and dogma. The purity of dharma, therefore, cannot be compromised with sectarianism. *A sectarian religion is open to a limited group of people whereas dharma embraces all and excludes none. This is the core of our dharma, our psyche. Having love for all human beings is dharma. Helping others ahead of one's personal gain is the dharma of those who follow the path of selfless service. Defending one's nation and society is the dharma of soldiers and warriors. In other words, any action, big or small, that is free from selfishness is part of dharma.*

Private owners or kings constructed temples. In the respective Agamas of either Vaishnava or Saiva form of worship, priests appointed are from amongst the sects who have implicit faith, devotion and dedication, a man of good character, integrity and piety. He must also be an accomplished man to perform rituals in ceremonial form of worship steeped with profound knowledge in Agama rules, proficiency in recitation and performance of rituals accurately and systematically with total identification and personification..... Hereditary succession is not inexorable rule. Due to non-availability of persons from the family eligible to be priest, outsiders would also become eligible. Normally, succession to the priesthood upto the lifetime of the priest is open to his successors. In some instances, priests from same Gotra were inducted and in their absence, even the disciples of the Guru and others were initiated. The property dedicated to the temple or the

priest enjoyed income derived from the offerings of devotees for himself and his maintenance and the temple. The object, thereby, appears to be, to keep the priest above want and free from family worries to enable him to dedicate himself totally to perform daily rituals to the deity. Generally the person acquainted with some Agama rules and Sampradaya, practicing and professing some religious faith and hailing from the same sect remained in the same temple or similar temples elsewhere".

The Supreme Court therefore, held that in view of the settled legal position that the appointment of an Archaka is a secular act, the previous custom or practice or usage in making an appointment to the office of an Archaka is regulated under the Act, and as an object in that behalf the hereditary right or custom or usage prevalent in that behalf, was statutorily abolished.

In fact, section 13 of the Impugned Andhra Pradesh Act, contains an injunction to the officer mentioned therein and every other person, exercising the power or performing the functions under the Act that they shall not interfere with and shall observe the form, usages, ceremonies and practices obtaining in and appropriate to the religious institution or endowment in respect of which such powers are exercised or functions are performed.

Section 142 of the same Act says as follows:-

"142.Savings:-Nothing in this Act shall-

a) affect any honour to which any person is entitled by custom, the performance of or interference with the

religious worship, ceremonies and poojas in religious institutions according to the Sampradayams and Agams followed in such institutions, or

b) authorise any interference with the religious or spiritual functions of the head of a Mutt including those relating to the imparting of religious institutions or rendering of spiritual service".

Therefore, it is obvious that a conjoint reading of the provisions of the Andhra Pradesh Act would show that the Act preserves the existing customs, practices, religious worships, ceremonies, poojas according to Sampradayams and Agamas followed in such institutions. **The Supreme Court observed that the main concern should be to preserve the custom and usage with a view to protect the sanctity of religious rituals.**

The Supreme Court in the above case, after upholding the constitutionality of the Andhra Pradesh Act, directed the state to constitute a committee to determine the payment of the salary to the holders of the office on hereditary basis prior to the abolition thereof. The committee recommended the rationalization of the pay scales and payment of Honorarium to the Archakas, Sri Pedda Jeengar and Sri Chinna Jeengar and other workers and staff. Upon which, there were applications filed by different parties before the Supreme Court which passed orders thereon.[1]

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1. 1997 (5) SC 376

(2) Sri Adi Vishveshwara of Kashi Vishwanath Temple, Varanasi Vs. State of UP and others.[1]

In this case, the Constitutionality of certain provisions of the UP Sri Kashi Vishwanath Temple Act 1983 (29 of 1983) was considered. The constitutionality of Section 4,5,6,16 to 22 is upheld by the Supreme Court. Here again, the Supreme Court analyses the Constitutional provisions under Articles 25 and 26 and distinguishes secular part of religion from non-secular part of religion.

The learned Judges have observed that "*the State Act has entrusted to the Board only secular function of Administration and Management and Temple fund which are not essential or integral part of religion.*" The Court has further observed that, it will not interfere in the freedom of conscience and right to, profess, practice and propagate religion. The Act merely changed the management from pandas to the Board – Legislature is competent to regulate such secular functions – Temple is not of any religious denomination or section thereof, nor believers of Shaiva form of worship belong to a denomination or sect – hence as Shaivites, they cannot claim their exclusive right to worship and to manage the Temple including the right to receive offerings given by the pilgrims to Lord Shiva, to perform pooja (rituals) and ceremonies in accordance with prevailing customs and usage in the Temple handed down from centuries.

1. (1997) 4 Supreme Court Cases 606.

Right to receive offerings being incidental to and coupled with duty to render service, on abolition of service on customary basis, concomitantly right to receive offerings is also extinguished and as such that does not amount to deprivation of right to livelihood of the pre-existing *pandas/archakas*. They owe their existence to an appointment. They are servants of the Temple terminable on the ground of misconduct or unfitness to perform service, rituals/ceremonies in accordance with Hindu *Shastras*, customs and practices prevailing in the Temple.

The court has further observed that, ***"Secularism is the basic feature of the Constitution. The Constitution seeks to establish an egalitarian social order in which any discrimination on grounds of religion, race, caste, sect or sex alone is violative of equality enshrined in Articles 14, 15, 16 etc. of the Constitution. India is a land of multi-religious faiths and the majority is Hindus. Hinduism is their way of life, belief and faith. Unfortunately, they are disintegrated on grounds of caste, sub-caste, sect and sub-sect. Unity among them is a clarion call of the Constitution. Unity in diversity is the Indian culture and ethos. The tolerance of all religious faiths, respect for each other's religion are our ethos. These pave the way and foundation for integration and national unity and foster respect for each other's religion; religious faith and belief. Integration of Bharat is, thus, its arch."***

"The denominational sect is also bound by the constitutional goals and they too are required to abide by law; they are not above law. Law aims at removal of the social ills and evils for social peace order stability and progress in an egalitarian society.

Article 26 does not create rights in any denomination or a section, which it never had. It merely safeguards and guarantees the continuance of a right, which such denomination or the section had."

The two Supreme Court decisions referred to above have laid down certain important principles and guidelines which are, in brief, enumerated hereunder.

(i) Every activity of a religion, caste, sect etc., is bound by the Constitutional goals and they all must abide by law and they are not above law.

(ii) The provisions of the enactment of a state may deal with the secular function of Administration and Management of the temple and temple funds, which are not essential or integral part of religion. But, the provisions of enactment should not interfere with the temple's religious customs, usages etc., freedom of conscience and right to process, practice and propagate religion.

(iii) Secularism is the basic feature of the Constitution. The administration, management and governance of the religious institution or endowment may have secular activities and the state could regulate them by appropriate legislation.

(iv) While performance of religious service is integral part of religion, Priests or Archakas (or even nominated Jeers), performing such service, are not so.

(v) Hereditary succession of Archakas (or nomination of Jeers) is not religious usage and hence not covered by Article 25(1)(b).

(vi) Determining eligibility of Archakas on the basis of the competence instead of on the basis of the particular family, sect or denomination is not violative of Article 25 (1)

(vii) The *Jeeyangar* (of Thirumalai temple) performs the office as a nominee and he also owes his existence to the nomination, which is antithesis to hereditary succession. Every *Mirasdar* or *Gamekar* equally cannot claim hereditary rights to continue to perform the duties generation by generation. They are servants or members of the Establishment liable to Disciplinary Jurisdiction.

(viii) The State Act (Andhra Pradesh) does not affect any honour to which any person including *Archakas* or *Jeengars* is entitled by custom.

(3) The Commissioner of Hindu Religious Endowments,
Ms.,Appellants
Vs.
Sri Lakshmindra Thirtha Swamiar of Sri Sirur Mutt,
Respondents &
The State of Travancore, Cochin, Intervener.[1]

1. 1954 MLJ 596 (SUPREME COURT)

In the above case, the High Court of Madras directed the writ of prohibition to issue in favour of Mathathipathi (Mahant) prohibiting the commissioner, Hindu Religious Endowments, Madras from proceeding with the settiement of a Scheme in connection with the Sirur Mutt. As against the judgment, the commissioner filed the appeal in the Supreme Court.

The validity of Madras Act II of 1927 was in question. During its pendency, the new Act, the Madras High Religious and Charitable endowment Act, 1951 was passed. Therefore, the new Act was also challenged.

The main contention of the Mahant of Sirur Mutt was that, having regard to the fundamental rights guaranteed under the constitution in matters of religion and religious institutions belonging to particular religious denominations, the law regulating the framing of a Scheme interfering with the management of a Mutt and its affairs by the matathipathi conflicted with the provisions of Articles 19(1)f and 26 of the Constitution and was hence void under Article 13.

Article 19(1)(f): Right of freedom:

All citizens have the right to acquire, hold and dispose of property

Article 13

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions

of this part, shall, to the extent of such inconsistency, be void.

(a) (2) The state shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void...

It was further alleged that the provisions of the Act were discriminatory in their character and offended against Article 15 of the Constitution.

Article 15(1):

The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

The learned Judges of the High Court declared several provisions of the new Act to be ultra-vires,(beyond the legislative powers) the constitution by reason of their being in conflict with the fundamental rights of the Matathipathi guaranteed under Articles 19(1)f, 25,26 and 27 of the Constitution.

That the state legislature was competent to enact laws on the subject of religious and charitable endowments was not disputed.

The High Court took the view that the matathipathi had certain well defined rights in the institution and its endowments which could be regarded a right to property within the meaning of Article 19(1)f of the constitution. The provisions of the Act to the extent that they took

away or unduly restricted the power to exercise these powers were not reasonable restrictions within the meaning of Article 19(5) and were therefore, held invalid. Secondly, it was held that the Matathipathi, as the head and representative of a religious institution had a right guaranteed to him under Article 25 of the constitution to practice and propagate freely the religion of which he and his followers profess to be adherents, and consequently the provisions affecting the said right were held invalid.

The Supreme Court, in the appeal, observed:

"He (The Mahanth) may be, as the Privy Council[1] *says, a manager or custodian of a institution who has to discharge the duties of a trustee and is answerable as such; but he is not a mere manager and it would not be right to describe Mahantship as a mere office. A superior of a Mutt has not only duties to discharge in connection with the endowment but he has a personal interest of a beneficial character which is sanctioned by a custom...."*

The Supreme Court's further observation is important:-

"A Mahant's duty is not simply to manage the temporalities of a Math. He is the head and superior of spiritual fraternity and the purpose of Mutt is to encourage and foster spiritual training by maintenance of a competent line of teachers who could impart religious instructions to the disciples and followers of the mutt and try to strengthen the doctrines of the particular school

1. Vide Vidya varutha v. Balusami, 48 I.A. 302

or order, of which they profess to be adherents. THIS PURPOSE CANNOT BE SERVED IF THE RESTRICTIONS ARE SUCH AS WOULD BRING THE MATADHIPATHIS DOWN TO THE LEVEL OF A SERVANT UNDER A STATE DEPARTMENT. IT IS FROM THIS STANDPOINT THAT THE RESONABLENESS OF THE RESTRICTION SHOULD BE JUDGED".

The view of the Supreme Court about Article 25 of the Constitution is that, as its language indicates, it secures to every person, subject to public order, health and morality, a freedom not only to entertain such religious belief, as may be approved of by his judgement and conscience, but also to exhibit his belief in such outward acts as he thinks proper and to propagate or disseminate his ideas for the edification of others. The Supreme court has further observed that it is the propagation of belief that is protected, no matter whether the propagation takes place in a church or Monastry, or in a temple or parlor meeting.

The Supreme Court then discusses the question where the line is to be drawn between what are matters of religion contemplated under Article 26(b), and what are not. The Court held that the administration of its property by a religious denomination is different from the right to manage its own affairs in matters of religion, and the latter is a fundamental right which no legislature can take away, whereas the former can be regulated by laws which the legislature can validly impose. The Supreme Court observes:

"Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. A religion may not only lay down a code of ethical rules for its followers to accept, it must prescribe rituals and observances, cere..ıonies and modes of worship which are regarded as integral part of religion, and these forms and observances might extend even to matters of food and dress.

The guarantee under our Constitution not only protects the freedom of religious opinion, but it protects also acts done in pursuance of a religious opinion and this is made clear by the use of the expression, 'practice of religion' in Article 25. But, however, restrictions by the state upon free exercise of religion are permitted both under Articles 25 and 26 on grounds of public order, morality and health".

The observations of the Supreme Court regarding the 'essential part of a religion' are important and reproduced below:

"What constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindu prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire, all these would be regarded as parts of

religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Article 26(b). What Article 25(2)(a) contemplates is not regulation by the State of religious practices as such, the freedom of which is guaranteed by the Constitution except when they run counter to public order, health and morality, but regulation of activities which are economic, commercial or political in their character though they are associated with religious practices....the provision for protection of religion was not an absolute protection to be interpreted and applied independently of other provisions of the Constitution. ***These privileges must be reconciled with the right of the State to employ the sovereign power to ensure peace, security and orderly living without which constitutional guarantee of civil liberty would be a mockery."***

The Supreme Court further observes;

"Our Constitution-makers, however, have embodied the limitations which have been evolved by judicial pronouncements in America or Australia in the Constitution itself and the language of Article 25 and 26 is sufficiently clear to enable us to determine without the aid of foreign authorities as to what matters come within the purview of religion and what do not. As we have

already indicated, freedom of religion in our constitution is not confined to religious beliefs only; it extends to religious practices as well subject to the restrictions which the constitution itself has laid down....Of course, the scale of expenses to be incurred in connection with these religious observances would be a matter of administration of property belonging to the religious denomination and can be controlled by secular authorities in accordance with any law laid down by a competent legislature; ***for it could not be the injunction of any religion to destroy the institution and its endowments by incurring wasteful expenditure on rites and ceremonies".***

The Supreme Court while considering section 21 of the impugned Act observes;

"It is well known that there could be no such thing as an unregulated and unrestricted right of entry in a public temple or other religious institution, for persons who are not connected with the spiritual functions thereof. It is a traditional custom universally observed not to allow access to any outsider to the particularly sacred parts of a temple as for example, the place where the deity is located. There are also fixed hours of worship and rest for the idol when no disturbance by any member of the public is allowed".

The court further observes that no rigid demarcation could be made between the spiritual duties of the Mahant and his personal interest in the Mutt

property. The learned Judges felt that the restrictions (under section 56 of the impugned Act) would be opposed to Article 26(d) of the Constitution, and crippled his authority as Mahant altogether and reduce his position to that of an ordinary priest or paid servant.

The above case was subsequently referred to in A.S. Narayana Dikshitulu and others Vs. State of A.P and others,[1] which was discussed already. However, in this context, one feels that regarding powers and privileges of the head of a Mutt, these two decisions appear to express conflicting views.

One of the problems which had been exercising the minds of the Hindu social reformers during the period preceding the Constitution was the existence in the midst of communities, a section classified as 'untouchables'. A custom which denied to large sections of Hindus the right to use public roads and institutions to which all the other Hindus had a right to access, purely on grounds of birth could not be considered reasonable and defended on any sound democratic principle, and efforts were being made to secure its abolition by legislation. This culminated in the enactment of Article 17 of the Constitution, which is as follows:-

"'Untouchability' is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'Untouchability' shall be an offence punishable in accordance with law".

1. 96(9) Supreme Court Cases 548

A law, therefore, which falls within Article 25(2) (b) will control the right conferred by Article 25(1), and the limitation in Article 25(1) does not apply to that law.

(4) SESHAMMAL & ORS. ETC.

Vs.

STATE OF TAMIL NADU[1]

In the above case, it was decided that the appointment of Archaka will have to be made from the specified denomination, sect or group in accordance with the directions of Agamas governing the temple. Section 55 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, gave the trustee of a temple the power to appoint the office holders or servants of the temple and also provided that where the office or service is hereditary, the person next in the line of succession shall be entitled to succeed. In only exceptional cases the trustee was entitled to depart from the principle of next-in-the line of succession, but even so, the trustee was under an obligation to appoint a fit person to perform the service after having due regard to the claims of the members of the family. Section 116(2)(xxiii) of the Act gave power to the Government to make rules providing for the qualifications to be possessed by the officers and servants and their conditions of service. The State Government framed the Madras Hindu Religious Institutions (officers and servants) Service Rules 1964. Rule 12 provided that an *Archaka*, whether hereditary or

1. 1972-III SCR PAGE 818

non-hereditary whose duty it is to perform *Pujas*, shall, before succeeding to the office or appointment to the office, obtain a certificate of fitness for performing the duties of his office from the head of an institution imparting instructions in *Agamas* or from the head of a math recognised by the Commissioner or from such other person as may be designated by the Commissioner.

The Act was amended by the Amending Act of 1970. The Amending Act did away with the hereditary right of succession to the office of *Archaka.* The petitioners who were *Archakas* of *Saivite* and *Vaishnavite* temples and *Matadhipathis* to whose *Mutts* temples are attached filed writ petitions contending that the amendments violated Articles 25 and 26 of the constitution.

Dismissing the petitions, the High Court held

(1) The protection of Articles 25 and 26 of the Constitution is not limited to matters of doctrine or belief; they extend also to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances etc., which are the integral parts of religion. What constitutes an essential part of a religion or religious practice has to be decided by the Courts with reference to the doctrine of a particular religion including practices which are regarded by the community as a part of its religion.

The Court further observed:

"The rituals have a two-fold object. One is to attract the lay worshipper to participate in the worship

carried on by the priest or Archaka. It is believed that when a congregation of worshippers participates in the worship a particular attitude of aspiration and devotion is developed and confers great spiritual benefit. The second object is to preserve the image from pollution, defilement or desecration. It is part of the religious belief of a Hindu worshipper that when the image is polluted or defiled the Divine Spirit in the image diminishes or even vanishes. That is a situation which every devotee or worshipper looks upon with horror. Pollution or defilement may take place in variety of ways. According to the Agamas, an image becomes defiled if there is any departure or violation of any of the rules relating to worship. In fact, purificatory ceremonies have to be performed for restoring the sanctity of the shrine. Worshippers lay great store for the rituals and whatever other people, not of the faith, may think about these rituals and ceremonies, they are a part of the Hindu Religious faith and cannot be dismissed as either irrational or superstitious".

An illustration of the importance attached to minor details of ritual is found in the case of His Holiness Peria Kovil Kelvi Appan Thiruvenkata Ramanuja Pedda Jiyyangarlu Varlu v. Prathivathi Bhayankaram Venkatacharlu and others[1] which went up to the Privy Council[2] (already discussed). The contest was between two denominations of *Srivaishnava* worshippers of South India, the *Vadagalais*

1. 73 IA 156
2. ILR (1947 PC) 436

and *Thengalais.* The temple was a *Srivaishnava* temple and the controversy between them involved the question as to how the invocation was to begin at the time of worship and which should be the concluding benedictary verses. This gives the measure of the importance attached by the worshippers to certain modes of worship. The idea most prominent in the mind of the worshipper is that a departure from the traditional rules would result in the pollution or defilement of the image, which must be avoided at all costs. That is also the rationale for preserving the sanctity of the *Garbhangriha* or the *Sanctum Sanctorum.* In all these temples in which the images are consecrated, the *Agamas* insist that only the qualified *Archaka* or *Pujari* steps inside the *Sanctum Sanctorum* and that too after observing the daily disciplines which are imposed upon him by the *Agamas.* As an *Archaka* he has to touch the image in the course of the worship and it is his sole right and duty to touch it. The touch by any body else would defile it. Thus under the ceremonial law pertaining to temples even the question as to who is to enter the *Garbhagriha* or the *Sanctum Sanctorum* and who is not entitled to enter it and who can worship and from which place in the temple are all matters of religion as shown in the above decision of the Court.

The Court further observes:

"It is, therefore, mainfest that the Archaka of such a temple besides being proficient in the rituals

appropriate to the worship of the particular deity, must also belong, according to the Agamas, to a particular denomination. An Archaka of a different denomination is supposed to defile the image by his touch and since it is of the essence of the religious faith of all worshippers that there should be no pollution or defilement of the image under any circumstances,the Archaka undoubtedly occupies an important place in the matter of temple worship. Any state action which permits the defilement or pollution of the image by the touch of an Archaka not authorised by the Agamas would violently interfere with the religious faith and practices of the Hindu worshipper in a vital respect, and would, therefore, be prima facie invalid under Article 25(1)of the Constitution".

The Court has finally held in the above case that the legislation in this respect does not interfere with religious practice or matter of religion and, therefore, is not invalid.

The important point to be noted in the above case is that the Supreme Court while considering the provision of the Tamil Nadu Act XII of 1959 as amended in the year 1970, has expressed the opinion that the Archaka of temple, besides being proficient in the rituals appropriate to the worship of the particular deity, must also belong to a particular denomination, because, an Archaka of a different denomination would defile the image by his touch. The appointment of the Archaka, it was held, will have to be made from the specific denomination, sect in accordance with the direction of Agamas governing the temple.

But, however, the view of the Supreme Court in the case A.S. Narayana Deekshitulu Vs. State of AP and others,[1] (discussed already) appears to be different. The Judges in the above case, while considering the validity of certain provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act 1987, have stated that the Archaka need not be from the same family, sect, sub-sect or denomination, since after the statutory regulation, the field of choice is widened and all eligible candidates including those available from the family etc. will be considered; competency is tested and when one is found qualified, appointment is made to the office of the Archaka according to the prescribed procedure.

The Supreme Court considered its earlier decision in Seshammal Vs. State of Tamilnadu,[2] (discussed above) and observed that in Seshammal case, the usage was not an issue since the Hereditary right or usage or practice was not avoided in the Madras Act, whereas, Section 34(1)(b) of the Andhra Pradesh Act, has done away with the appointment on the basis of usage and custom.

The Supreme Court's further observation is significant.:

"So long as the statute did not intervene regulating the secular appointment of an Archaka, the appointment according to prevailing usage or custom was upheld by the courts. Consequently, the right of succession or

1. (1996) 9 Supreme Court Cases 548
2. 1972-III SCR page 818

appointment remained valid. But with the statutory intervention, unless the custom or usage is held an integral part of the religion, the legislature has power to regulate the appointment of an archaka or other office-holder. In view of the settled legal position that the appointment of an Archaka is a secular act, the previous custom or practice or usage in making an appointment to the office of an archaka is regulated under the Act. As an object in that behalf, the hereditary right or custom or usage prevaient in that behalf, was statutorily abolished".

The Supreme Court, while answering the contention that as per rules laid down in Agamas, the Archaka of a particular denomination alone is entitled to enter sanctum sanctorum and touch the image of God, and a touch by a person of different denomination defiles the image the God, observes:-

"What would be relevant is not that the candidate who seeks to serve as an Archaka must be from the family etc. but must be an accomplished person in Agama rules having faith and devotion in that form of worship and also proficiency to perform rituals and rites, ceremonial rituals appropriate to the temple according to its customs, usages, Sampradayams etc. In other words,the faith and belief in the religion, customs, usages or Sampradayams in that particular Agama and proficiency in performance of the rituals to the image of God in those particular rituals are conditions precedent to be eligible to hold office of the Archaka. One who fulfils those

preconditions is eligible to be considered and appointed to the office of archaka or other similar offices. The regulation of this secular activity, therefore, does not offend any faith or belief in the performance of those duties by a person other than one hailing from the family, sect/sub-sect or denomination hitherto performing the same".

Therefore, the Supreme Court in the latter case, appears to have contradicted its earlier decision in Seshammal case, but justifies the finding on the basis of the express provisions of the Andhra Pradesh Act, which are found to be valid. The entire issue may require reconsideration in an appropriate case in future.

ANALYSIS

The following principles of law emerge from the above said decisions:-

1. The Court will not interfere in the freedom of conscience and right to profess, practice and propagate religion.

2. Articles 25 and 26 of the Constitution of India protect only integral and essential part of religion. Whereas, non-integral and non-essential part of the religion being secular in character can be regulated by legislation. The essential or integral part of religion is to be ascertained from the doctrine of that religion itself according to the tenets, historical background and change in evolved process. While performance of religious service

is integral part of religion, a priest or *Archaka* performing the service is not so.

3. Legislature is competent to abolish the hereditary succession of *Archakas*.

4. The Archakas are subject to discipline and control by the authorities. Hereditary succession of *Archakas* is not a religious usage and hence not covered by Articles 25 and 26. Preservation of Custom, Usage, Performance, ceremonies, pujas etc. would not affect the power to abolish the hereditary office. Determining eligibility of the *Archakas* on the basis of competence instead of on the basis of a particular family, sect or denomination is also not violative of Article 25(1).

5. It is true that the position of the office of *Pedda Jeengar* or *Chinna Jeengar* as a religious head in the context of *matadhipathi* of Ramanuja sect was upheld by the Privy Council, yet as regards his right in the Lord Venkataramana Temple, he performs the office as a nominee and, therefore, he also owes his existence to the nomination which is antithesis to hereditary succession. Every *mirasdar* or *Gamekar* equally cannot claim hereditary right to continue to perform the duties from generation to generation. They all are servants or members of the establishment liable to disciplinary jurisdiction. Consequently, they stand along with the priest (*archaka*) of the temple of Sri Balaji.

6. *Pandas/Archakas* are servants of the temple, terminable on the ground of misconduct or unfitness for

performance of service relating to rituals/ceremonies in accordance with Hindu *Sastras,* customs and practices prevailing in the temples handed down from centuries.

7. Right to religion guaranteed by Articles 25 and 26 is not absolute or unfettered right to propagate religion, which is subject to legislation by the state limiting or regulating every non-religious activity. The right to observe and practice rituals and right to manage in matters of religion are protected under these articles. But right to manage the Temple or endowment is not integral part of religion or religious practice of religion as such, and it is amenable to statutory control. These secular activities are subject to state regulation but religion and religious practices, which are an integral part of religion, are protected. It is a well-settled law that administration, management and governance of the religious institution or endowment are secular activities and the State could regulate them by appropriate legislation.

8. Article 26 does not create right in any denomination and section, which it never had. It merely safeguards and guarantees the continuance of a right, which such denomination or a section had. The denominational Sect is bound by the Constitutional goals and they too are required to abide by law; they are not above law.

9. A religion undoubtedly has its basis in a system of beliefs or doctrines; which are regarded by those who profess that religion as conducive to their spiritual

well-being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which is regarded as integral parts of religion and these forms and observances might extend even to matters of food and dress.

10. The guarantee under our Constitution not only protects the freedom of religious opinion but it protects also acts done in pursuance of a religious practice and this is made clear by the use of the expression of "practice of religion" in Article 25. Restrictions by the State upon free exercise of religion are permitted both under Articles 25 and 26 on grounds of public order, morality and health. Clause (2) (a) of Article 25 reserves the rights of the State to regulate or restrict any economic, financial, political and other secular activities, which may be associated with religious practices. Law aims at removal of social ills and evils for social peace, order, stability and progress in an egalitarian society.

Besides Articles 25 and 26 of the Constitution, Article 19 in Part III dealing with Fundamental rights of the Citizen is also important in general way. By the said provision, all citizens shall have the right to freedom of speech and expression, to assemble peaceably and without arms to form Associations and unions. But, the State can also make law imposing reasonable restrictions on the right of this freedom.

It is not enough if one knows the law as stated in an enactment like Constitution of India; it is more important to know the precise meaning of that law as given by the Supreme Court. It is true that the views of the Supreme Court are final and not open to question. But, in appropriate cases, the Supreme Court has a right to review its earlier decision by constituting a larger Bench and reconsider the whole issue. But, however, till that eventuality occurs, we have to accept and abide by the decisions of the Supreme Court even if some of the findings or observations are unpalatable.

It is true that a section of people will always be affected by an enactment or by a court decision, but in a large democracy consisting of all kinds of faiths, the welfare of the entire society, even at the cost of the rights of a few people, is of paramount consideration.

Now, it is my endeavour to find out whether the principles of law stated in the pre-constitutional period in respect of certain temple disputes, are valid today in the context of the Constitutional provisions, and the decisions of Supreme Court and to find out whether these earlier decisions are relevant in view of the fast changing society and its attitudes.

CHAPTER - VII

THE VALIDITY AND RELEVANCE OF KANCHEEPURAM CASES

From the discussion made in the previous Chapter, it would be obvious that the law, both state enactment and Judge made law (decisions of the Courts), have made deep inroads into the temple administration. It is very important to note that while it may appear that such interference by the law and courts in respect of temples is unwarranted and undesirable, on a close scrutiny, it would be clear that, taking the public interest into consideration, and for lasting peace and order in the Society, both the legislature and the Courts have been making bonafide efforts by and large in the right direction.

The basic principles stated in the provisions of the Constitution of India and the decisions of the Supreme Court of India thereunder discussed already have to be borne in mind, while discussing the validity and relevance of Kancheepuram Shri Devarajaswami Temple cases discussed in Chapter 3, and other temple disputes discussed in Chapter 4.

During the British rule, we did not have a constitution of our own. There was no Supreme Court of India, and all the appeals were preferred to the Privy Council in England. Most of the Judges in India and all the Judges of the Privy Council were Englishmen. Even most of the sub-ordinate judges and Munsifs who dealt with these

disputes in Vaishnavite temple were not Vaishnavites. But, however, all these presiding officers of the Courts took pains to study and enquire into the facts and circumstances of each and every case, the custom and practice prevailing in the temples and also, the Hindu law texts on the relevant subjects. They were all ably assisted by the lawyers who were well versed with the above subjects and in some cases the litigants themselves competently cooperated with the courts. So much so, the courts delivered memorable judgements in simple and lucid style. We will presently see as to how the judges who dealt with Kancheepuram cases, have given impeccable solutions to disputes, and which have stood the test of time till today. The principles stated in these judgements have not only been not altered in any manner by recent judgements but also have, infact, been reinforced and restated, though in different language and context.

In other words, if the principles of law stated in the Kancheepuram cases are, in effect, expressly or impliedly approved in the Supreme Court cases analysing the provision of the Constitution of India, then, it is safe to conclude that the decisions made on the basis of the facts of the Kancheepuram cases are not open to question today and remain intact. But, if, on the other hand, the Supreme Court has expressey or impliedly overruled the principles of law stated in Kancheepuram cases, then, the decisions in the Kancheepuram cases, can be reviewed even today.

Therefore, the endeavour would be to examine precisely the principles of law stated in both the sets of cases, compare and contrast them, and to arrive at the proper logical conclusion.

But, however, one should not forget that we are not concerned with the facts of the cases since they are bound to be different from case to case, and we are only concerned as to whether, by the evolution of law, the principles of law stated in the earlier cases have undergone any change.

The points established by the Kancheepuram cases discussed already can be put in a nutshell and are given below:-

1.The court cannot pronounce on the truth of religious tenets and will not regulate religious ceremonies, but will protect a person's right to certain status or property.

2.The Civil Court cannot decide questions of rituals except in so far as the decision of such question is a necessary incident to the decision of a civil right.

3.The rights of the parties depend upon custom, usage and practice.

4. "Public peace should not be disturbed" is the main criterion.

5.Innovation or interference into the customary practice during worship in a temple should not be allowed.

6.The questions pertaining to rituals could be gone into by the courts only for ascertaining the rights of parties, but it has no jurisdiction to prescribe forms of prayers, rights to religious precedence and questions of that nature.

7.The procession in the streets must be as per the custom and tradition.

Now, the question is whether the above said principles of law have undergone any change after the Constitution of India came into force, either by its provisions, or by the cases decided thereunder.

According to Article 25 of the Constitution, all persons are equally entitled to freedom of conscience and the right to profess, practice and propagate religion. But, this is subject to:

(1) Public Order (2) Morality (3) Health (4) other provisions of the constitution.

Similarly, Article 25(2) also imposes restrictions in the following manner:-

"Nothing in this article shall affect the operation of any existing law or prevent the state from making any law:

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice:

(b) Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Again, Article 26 gives certain rights to every religious denomination or any section thereof, but this is subject to public order, morality and health

The above said provisions have been extensively dealt with in several Supreme Court cases, some of which have been discussed in the previous chapter.

The principles of law decided in those cases, interpreting Articles 25 and 26 of the Constitution of India are briefly given hereunder:-

1.Articles 25 and 26 of the Constitution of India protect only integral and essential parts of religion. Whereas, non-integral and non-essential part of the religion being secular in character can be regulated by legislation.

2. Duty to preserve custom and usage in the performance of ceremonies, rituals, poojas etc. would not affect the legislative power to abolish the hereditary offices etc. which are secular in nature.

3. Pandas/Archakas, Mirasdars, Gamekars, Jeengars are all servants of the temple liable to disciplinary jurisdiction on the ground of misconduct or unfitness of performance of service, rituals/ceremonies in accordance with Hindu sastras, custom and practice prevailing in the temples handed down from centuries.

4.The right to manage its own affairs in matters of religion by a religious denomination or any section thereof stated in Article 26(b) of the Constitution of India is a

fundamental right, which no legislature can take away, whereas the administration of its property can be regulated by laws, which the legislature can validly impose.

5.The Supreme Court's observation in Seshammal case,[1] regarding the Tirumalai case decided in "His Holiness Peria Kovil Keli Appan thiruvenkata Ramanuja Pedda Jiyyangarlu Varlu Vs. Prathivathi Bhayankaram Venkatacharlu and others,[2] is worth noting.

"An Illustration of the importance attached to minor details of ritual is found in the said case, which went upto the Privy Council. The contest was between two denominations of Vaishnava worshippers of South India, the Vadagalais and Thengalais. The temple was a Vaishnava temple and the controversy between them involved the question as to how the invocation was to begin at the time of worship and which should be the concluding benedictory verses. This gives the measure of the importance attached by the worshippers to certain modes of worship. The ideas most prominent in the mind of the worshipper is that the departure from the traditional rules would result in the pollution or defilement of the image which must be avoided at all costs. That is also the rationale for preserving the sanctity of the Garbhagriha or the sanctum sanctorum".

The above are some of the important points decided by the Supreme Court.

1. 1972-III SCR page 818
2. 1947 ILR 436 (Privy Council)

The single common feature that is seen in all the decisions is that the Courts have always held that the religious custom, usage and practice should be protected. In addition, the peace, tranquility and the public order are of paramount consideration in deciding cases.

The religious "custom and usage" which was protected in all the earlier decisions of Kancheepuram temple is not disturbed by Constitutional provisions. But, certain exceptions to the general rule are all recognised, the most important being Article 25(2)(a), which lays that the state can make law regulating or restricting any economic financial, political or other secular activity which may be associated with religious practice and Article 25(2)(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

The Supreme Court observes as follows:-

"One of the problems which has been exercising the mind of the Hindu social reformers during the period preceding the constitution was existence in the midst of communities which were classed as 'Untouchables'. A custom which denied to large section of Hindus, the right to use public roads and institution to which all the other Hindus had a right to access purely on grounds of birth, could not be considered reasonable and defended on any sound democratic principle, and efforts are being made to secure its abolition by legislation" (Sri Venkataramana

Devaru and others (Appellants) Vs. State of Mysore and others (Respondents).[1]

Since the custom and usage have been given top priority for resolving the disputes in the temples, it would be necessary to refer to certain passages in the authoritative MAYNE's Hindu law and usage.

There are three sources of Hindu law (1) The *Smritis* or the *Dharmasastra* (2) The Commentaries and the digest and (3) Custom.

There is also a fourth source and that is, the enactment of legislature declaring or altering the rules of Hindu law.

Where the *Smritis* and commentaries are silent or obscure, the principles of justice, equity and good conscience are now, as in ancient Hindu law, available within limits, to supplement the rules of Hindu law.

The Courts of law do not make laws, but only ascertain them [*Pudiava v Pavanasa*[2]]. But, however, the Supreme Court has observed in Luhar Amritlal v Doshi Jayantilal[3] that the judicial decisions have become part and parcel of the Hindu Law as is administered today, and when there is an exposition of the text in a judgement of the Privy Council, it is not necessary to decide the question afresh with reference to conflicting texts.

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1. AIR 1958 SC 255
2. (1922) 45 Madras 949, 969. 968 (FB)
3. 1960 SC 964 = 1960(3) SCR 842

The beginnings of law were in customs.

The Smritis and digests were largely based upon customary law.[1] On matters not covered by *Smritis* and commentaries, usage supplements the law laid down in them. Even where a custom exists in derogation of the law laid down in the *Smritis*, it is nonetheless a source of law governing the Hindus. The *Smritis* repeatedly insist that customs must be enforced and that they either override or supplement the *Smriti* rules. *Manu* declares that it is the duty of a king to decide all cases which fall under the eighteen titles of *VYAVAHARA* or civil law according to the principles drawn from local usage and from the institutes of sacred law,[2] and that "a king who knows the sacred law must inquire into the laws of castes, of districts, of guilds and of families and (thus) settle the peculiar law of each."[3]

Fullest effect is given to custom both by Courts and by legislature. The Judicial Committee in Ramnad case[4] (Collector of Madura Vs. Mootoo Ramalingam) said: "*Under the Hindu system of law, clear proof of usage will outweigh the written text of the law. And all the Acts which provide for the administration of the law dictate a similar adherence to usage, unless it is contrary to justice equity or good conscience, or has been actually declared to be void.*

1. Deivanai Vs. Chidambaram Chettiar, AIR 1954 Madras 657
2. Manu, VIII, 31
3. Manu VIII, 41
4. 1868 12 MIA 397

The first question is as to the validity of customs, differing from the general Hindu law. Law and usage act, and react, upon each other. A belief in the propriety, or the imperative nature of a particular course of conduct, produces a uniformity of behaviour in following it; and an uniformity of behaviour in following a particular course of conduct produces a belief that is imperative, or proper, to do so. When from either cause, or from both causes, a uniform and persistent usage has moulded the life, and regulated the dealings, of a particular class of the community, it becomes a custom, which is a part of their personal law."

Hence, where a special usage of succession was set up, the High Court of Madras said:[1]

"What the law requires before an alleged custom can receive the recognition of the court, and so acquire legal force, is satisfactory proof of usage, so long and invariably acted upon in practice, as to how that it has, by common consent, been submitted to as the established governing rule of the particular family, class district or country; and the course of practice upon which the custom rests must not be left in doubt, but be proved with certainty."

If a custom is found to have existed at a particular date within living memory, it must be taken to have the ordinary attribute of a custom that it is ancient.

1. Sivanananja v. Muttu Ramalinga (1866) 3 Mad HC 75,77

A custom must be ancient, certain and reasonable, and being in derogation of the general rules of law, must be construed strictly. When a custom or usage is repeatedly brought to the notice of the courts, that custom may be held to be introduced into the law without the necessity of proof in each particular case.

Continuity is essential to the validity of a custom.

The most important aspects of custom in the Hindu law have been discussed above. These points are to be borne in mind while considering the relevance and validity of Kancheepuram cases.

Enactments of the legislature, declaring, abrogating or modifying rules of Hindu Law are an additional and modern source of Hindu Law. They have been an important factor in the development of Hindu law. Most of them are in the direction of reform of Hindu law and some of them supercede Hindu law in certain classes of cases like:-

1.Caste Disabilities Removal Act (XXI of 1850)

2.Hindu Widow Remarriage Act (XV of 1856)

3.Special Marriage Act 43 of 1954

4. Madras (Tamil Nadu) Temple Entry Authorisation Act 1947 (TN Act V of 1947)

Article 25(2)(b) of the Constitution of India provides that whenever there is conflict between religious practice and need of social reform, religion must yield

As Dr.Ambedkar explained: "the conception of religion in this country is so vast as to cover every aspect

of life from birth to death. If the state were to accept this conception of religion, the country would come to a standstill in regard to reforms. It may be expected that no sensible State, in the name of social reform, would affect the very essence of any religion. The legislation would only touch questionable practices, dogmas and the like, which stand in the way of social progress of the country as a whole, *e.g.*, the system of *devadasis*".[1]

Social reform means eradication of practices or dogmas, which stand in the way of the country's progress as a whole but do not form the essence of religion.

Article 25(2)(b) speaks of throwing open of Hindu religious institutions.

The right conferred by this clause of the Constitution is not of an absolute character. It is a right of every member in Hindu public to enter into a public temple for worship. It does not, however, mean that such temple must be kept open at all hours or that any member of the Hindu public must be allowed to perform those services which are open only to those specially initiated, according to the ceremonial law governing the temple.[2]

From the above discussion, it is clear that, while, on the one hand, the basic law, that is, the Constitution of India, guarantees to all persons freedom of conscience and the right to freely to profess, practice and propagate

1. Constituent Assembly Debates-Vol. VII page 781
2. AIR 1958 SC 255

religion, on the other hand, the following exceptions, or controlling factors are recognized and well settled:-

(1) Public order, morality and health will out-weigh freedom relating to religion.

(2) The State can make law regulating or restricting any secular activity associated with religious practice.

(3) The State can make law providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Article 26 of the Constitution of India gives to every religious denomination or any section thereof, the right to manage its religious affairs.

Both the above said Articles 25 and 26 must be read together and understood as the Supreme Court of India has interpreted.

TAMIL NADU LEGISLATION

Besides the Constitution of India, there are successive Tamil Nadu Acts to control and administer Hindu temples, religious and Charitable institutions.

Various matters touching upon the administration of religious institutions and specific endowments in the State of Tamil Nadu were the subject matter of various and varied legislation for a considerable length of time. But, uniformly all such pieces of legislation touching upon the administration of temples and religious institutions or

specific endowments took care to preserve an overall power of supervision, management and administration in the bodies or authorities created by such statutes in preference to the courts which were exercising such functions under Sec.92 of the Civil Procedure Code, which enabled the court to exercise such jurisdiction and involved themselves in the matter of appointing trustees, settling schemes etc.

For the purpose of understanding the various provisions of the present Act of the year 1959 in the proper perspective, the following chronology of enactments and events are useful:-

(a) Regulation VII of 1817

This Regulation declared that it is the duty of the Government to see that the income from the endowments are applied according to the real intent and the will of the grantor. The Board of Revenue was vested with power of supervision of temples.

(b) Reversal of Policy of Government in 1839

The Government decided to hand over the temples to local persons. The Village temples were handed over to the pujaris and larger temples were handed over to the leading mutts. Thirupathi Devasthanam, the highest income yielding temple was handed over to Mahants (Byragi Vaishnavites) owing to conflicts between the sections of local Srivaishnavites.

(c) Act XX of 1863

The handing over of the temples to local authorities resulted in mismanagement and alienation of temple

properties and consequently Act XX of 1863 was passed constituting local temple committees as a form of supervision which originally vested in the Board of Revenue under Regulation VII of 1817.

The temple committees constituted could not function effectively since:-

(1) since their jurisdiction was not defined with sufficient clarity.

(2) because of absence of machinery to enforce obedience of orders.

(3) becuse of lack of funds and

(4) since procedures laid down were vague.

(d) Robinson's Bill 1877

This bill adopted several provisions of English law of Charitable trusts. A Board was constituted on the model of charity Commissioners in England.

(e) Act II of 1927

The Madras legislature passed the Madras Hindu Religious Endowments Act, 1927, with a view to provide for the proper administration and governance of the Hindu religious endowments. The Act provided for the supervision of the Hindu religious endowments through a statutory body known as the Madras Hindu Religious Endowments Board. Provisions were made for the control of the religious endowments as well as specific endowments in relation to temples. The Act divided the

temples into "excepted" and "non-excepted" temples. An excepted temple was one in which the right of succession to the office of trustee was hereditary. There was also a provision for framing of a scheme for the management of temples.

(f) The above Act was amended by Madras Act IX of 1937 by introducing a new chapter VI-A, which provided that notwithstanding that a temple or specific endowment attached to a temple was governed by a scheme previously framed by the Board or settled by a court, the Board if it were satisfied that the temple or endowment is being mismanaged and that in the interest of the administration of the temple or endowment, it was necessary to take proceedings under this chapter, might 'notify' the temple or endowment.

(g) By Act V of 1944 the temple committees were abolished and Assistant commissioners were appointed.

(h) The Madras Act XIX (19) of the year 1951 abolished the Board and vested the administration of religious and charitable endowment, in a Department of Government, the Head of which is the Commissioner.

It is worthwhile to quote certain passages from Madras Legislation Assembly debates.[1]

"The Act XIX of 1951, was introduced in the year 1949, by the Hon'ble T.S.S. Rajan, who recounted many

1. Madras Legislation Assembly debates, Feb4, 1959, 17:677-9, quoted in Mudaliar, Secular State page 149. See Arjun Appadurai's book "worship and conflict under colonial rule"

instances in the past-under Hindu rulers under East India Company and under the rule of the British crown – that provided ample justification for the interference of the Government in order to protect the property of religious institutions. In response to the question of the legality of such interference in a secular state, which India claimed to be, he replied 'we have examined the question and we have been assured that we have been within our rights to handle religious institutions and endowments....The fear of interfering with religious institutions have always been there with an alien government but with us it is very different. Ours may be called a secular government; and so it is. But it does not absolve us from protecting the funds of the institutions which are meant for the service of the people".

A week later, after considerable debate, this protective mandate of the state was put in even more colorful and radical terms by the Hon'ble Mr. O.P. Ramaswamy Reddiar (the then Chief Minister): "*The regulation of Hindu temples and Mutts (monasteries) is the regulation of the community's life and conduct; and the revival of our temples is the revival of our people. The temple is the invaluable link between Men and God, between society and religion, between public morality and private morality....If we do not make our temples a positive force, radiating a healthy, progressive, social and cultural outlook, we will be playing into the hands of the surging Godless crowd*".

The validity of the above Act 19 of 1951 was questioned in the case Kidangazhi Manakkal Narayan Nambudripad and others (petitioners) vs. the State of Madras (respondents).[1]

The petitioners were hereditary trustees of various temples and action was taken against them by officers appointed under the provisions of the Madras Hindu religious and Charitable Endowments Act, by demanding accounts and records, by appointing executive officers and by attempting to take possession of the temple and its properties. It was contended that the Act under which action was taken is an unconstitutional interference by State in matters of religion and therefore void, and that there is an invasion of their rights as hereditary trustees under Article 19(1) (f) of the Constitution and writs of prohibition against the officers were prayed for. The High Court held that:

(1) *The Indian constitution has not adopted the American view that the State should have nothing to do with religious institutions and endowments. While Articles 25 and 26 of the Constitution guarantee that all persons are equally entitled to freedom of conscience and the right to profess, practice and propagate religion and that every religious denomination or section thereof shall have the right to establish and maintain its own institutions and to manage them, the only specific prohibitions against the state are that no person shall be compelled to pay*

1. 1953 (II) MLJ 699

taxes the proceeds of which are specifically appropriated in payment of the promotion or maintenance of any particular religion or religious denomination and that religious institutions should not be imparted in educational institutions maintained by the State. Apart from these there is no general prohibition against legislation in respect of religion and the Act cannot therefore be impugned.

The learned judges observed that:

"while the state does not interfere in matters of religion in its doctrinal and ritual aspects locating it as a private purpose, it does exercise control over the administration of properties endowed for religious institutions locating it as a public purpose if the institutions themselves are dedicated to public".

The High Court held that the Impugned Act (Act 19 of 1951) is not repugnant to Article 14 of the Constitution on the ground that it singles out Hindu religious endowments for special treatment.

The learned Judges of the High Court have elaborately discussed the American law on the subject and considered Articles 25 and 26 of our Constitution in relation to American Constitution.

The learned Judges have observed:

"there are provisions in our Constitution which are inconsistent with the theory that there should be a wall of separation between Church and State.

Religion is purely a private matter. It consists in what beliefs a particular individual holds, what code of conduct he accepts, and what rituals he adopts in the observance of religion. It is to this aspect of religion that Articles 25 and 26 are addressed. It being purely personal matter, the Constitution guarantees that a person or religious denomination shall not be interfered with in the free exercise thereof. This guarantee is no doubt not absolute; the Government might impose controls even within the area covered by Article 25 and Article 26, if they are required in the interests of public order, morality or health.

But there is another aspect, which is not touched by Article 25 and 26. It has been recognised in all societies and at all times that religion has the effect of civilizing man and making him live an ordered and disciplined life and that it then contributes to public welfare. It is for this reason that advancement of religion has been recognised in English law to be a charitable purpose".

The above Act of 1951 is substituted by Tamil Nadu Act 22 of 1959 with certain additional provisions. The Act had undergone several amendments subsequently.

In the above said Act of 1959, "Temple" is defined in Section 6(20) as follows:-

"Temple" means a place by whatever designation known, used as a place of public religious worship, and dedicated to, or for the benefit of, or used as of right by,

the Hindu community or any section thereof, as a place of public religious worship:

Explanation:-Where a temple situated outside the State has properties situated within the State control shall be exercised over the temple in accordance with the provisions of this Act, in so far as the properties of the temple situated within the State are concerned:

The definition of temple is so comprehensive so as to include any place irrespective of installation of idols or buildings or tower, *Dwajasthambam* or a stupi. It is not necessary in all cases that the presence of idols is an essential requisite to bring the place within the definition of "temple" under the Act.

In considering whether the institution is a temple as defined in Section 6 (20), the main criterion is whether it is dedicated for public worship.

It is crystal clear from the provisions of the above Act and several Court decisions made thereunder, that the State Government has taken over the control and administration of most of the temples of Tamil Nadu in. It is not necessary for the purpose of this research to go into various provisions of the above said Act, since they do not affect the decisions of the Kancheepuram temple cases in any manner, although it is pertinent to point out the fact that several infights between factions and groups, rivalries and hostilities, and lack of spirit of cooperation and co-ordination among local worshippers are the main

reasons for the continued interference by the State in the affairs of the temple.

No doubt, therefore, inroads have been made into the temple administration by the Constitution of India by the Supreme Court, High Court and the Tamil Nadu Acts, even altering the Hindu Customary law. "Law-makers and the law enforcement machinery have no other choice" is the contention of the State.

But, now, let me analyse, for the purpose of this research, the salient features of the Supreme Court cases affecting or reinforcing the hardcore principles of the Kancheepuram cases referred to already.

The Supreme Court decisions make a clear divide between the integral or essential part of religion on the one hand and non-integral and non-essential part of religion on the other hand. Integral part of religion is performance of religious service in accordance with custom, usage and practice. The court will not interfere and the Government have no right to interfere in such religious custom, religious usage and religious practice which are integral to religion. On the contrary, the non-integral and non-essential part of religion is secular in character and this can be regulated by appropriate legislation. For example, appointment of *Archaka* and his emoluments and other offices connected with the temple are subject to discipline and control by the authorities in accordance with law.

The Kancheepuram cases referred to already also make it clear that in respect of religious custom, usage and practice, the court would not interfere, but, however, the court could go into the question what the established custom, usage and practice is. Therefore, the Kancheepuram cases had gone into the question of Adhyapakam service, Thodakkam etc. and decided what the custom that prevailed in the temple was. Similarly, the Civil court could go into the question as to who or which sub-sect had the right to the Adhyapaka service etc. and therefore the courts decided those issues also. The court decided about the regularization of processions keeping the public order in view.

The Supreme Court, as already stated, has divided "religion" as integral and non-integral parts of religion. Integral part relates to religious custom, religious usage and religious practice. Non-integral part relates to secular part associated with religious practice. This is the same as what is stated in Krishnasami Thathacharyar Vs. Krishnamachariar and others (ILR 5 Madras 313(DB)), whereas they make a divide between religious custom on one hand and claim for status or property relating to religion on the other. The only difference in the Supreme Court decisions is they are using the word "secular" on the basis of the text of the Constitutional provisions. But, however, the Supreme Court also decides the validity of the Sections 34 and 25 of the Andhra Pradesh Charitable and Hindu Religious and Endowment Act 1987 abolishing

the hereditary rights of Archakas and other office holders and held that these provisions of the Andhra Pradesh Act are not violative of Articles 25 and 26 of the Constitution.

Therefore, it has to be concluded that all the principles stated in ILR 5 Madras 313 and other decisions in Kancheepuram cases are impliedly approved, but with one exception namely, if any state like Andhra Pradesh chooses to abolish the hereditary rights of Archakas and other office bearers including Jeengars, and curtails the powers of those persons, the Act will be upheld by the Court, provided the religious customs, usage and practice prevailing for centuries are kept in tact.

Although it had discussed two post-constitutional Kancheepuram cases, reported in V. Srinivasachariar In re. Thatha Desika Thathachariar and others[1] and R. Thathadesika Thathachariar and another (Appellants) Vs. K.V. Alagia Manavala and others (Respondents),[2] the impact of Constitutional provisions has not been considered by the learned judges in those cases. It is therefore obvious that the constituional provisions, particularly exceptions in Articles 25 and 26 are not attracted. However, the Supreme Court in 1995 Supp(4) Supreme Court Cases 563 by resolving the conflict between the two sects in a reconciliatory manner without going to the legal or technical issue would show that the court wanted to bring peace and harmony under the clause Public order, morality and health mentioned in Article 25.

1. 83 LW 407 2. 1995 Supp (4) Supreme Court Cases 563

From the discussion of various decisions of the court on Kancheepuram Shri Devarajaswami Temple and the Supreme Court decisions, the following points emerge:-

(1) Religious custom, usage and practice should be kept in tact and the Court should not interfere in such things.

(2) The Constitution of India only re states and re-iterates the existing law in different language and gives full freedom for the practice of religion by all.

(3) But the Constitution of India also recognizes exceptions and limits of the freedom to practice religion

(4) The State can make law, and has, infact, made law altering even some of the customs and practices in the larger interest of the society and for enforcing social reforms and this would not amount to interference in purely religious custom etc.

(5) Appointment of Archakas and other office holders, their emoluments etc. are all secular part of religion and can be controlled by legislation.

The Constitution of India, the decisions of Supreme Court and High Court after the year 1950 and the State Act have all changed to some extent, the Hindu customs and usages for the sake of reforms of the society and to uphold democratic principles and for public order, health and morality.

But, however, the principles of law and decisions made by the Kancheepuram cases referred to above, have

stood the test of time and are infact, strengthened by all the post-constitution factors mentioned above. The reasons are:-

(1) The principle of religious custom, usage and practice on the basis of which the decisions were given in the Kancheepuram cases, was upheld by the Supreme Court decisions interpreting the Andhra Pradesh state Acts' validity with reference to Articles 25 and 26 of Constitution of India.

(2) The Civil Courts' right, as elaborated and expatiated in Kancheepuram cases, is not taken away either by the constitution or by the Supreme Court decisions or by any local Act.

(3) The Adhyapakam, Thodakkam, Manthram etc. and the sub-sect entitled to perform these acts of religious service are all valid and relevant even today and infact not taken away by any of the provisions of the Constitution or by local Act or by Supreme Court decisions, expressly or by implication.

(4) Every Kancheepuram case was a dispute between two sects or sometimes within the sect, or between individual. Therefore, they are all disputes between parties inter se. The decisions in those cases have become final. Any review of the decision is not maintainable in law and will be barred by the principles of resjudicata as stated in section 11 of Civil Procedure Code. (The issue once decided between two parties in a Court of law cannot be re-agitated). Section 11 of the Civil

Procedure Code states as follows:- "No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court".

The High Court in V. Srinivasachar In re. Thatha Desika Thathachariar and others reported in 83 LW 407 has observed that "The custom and usage pleaded by the plaintiff are not true, and go directly counter to the decisions inter partes".

(5) From the principle stated in the Elephant case,[1] it follows that if some practice exists without any disturbance for considerable period of time, it should be continued and not disturbed in future by the Courts. The Supreme Court stated that, "the court feels that it is reasonable to permit two elephants – one painted with Thengalai namam and another painted with Vadagalai Namam- to lead the procession side by side on festive occassions pending disposal of the appeal". Again, the Supreme Court has observed in the final disposal that "this order (interim order), reportedly, has worked without any friction between the two sects for the last twelve years. The Executive trustee, presumably, has carried out the

1. 1995 Supp.(4) Supreme Court Cases 563

above orders to the satisfaction of all concerned." The Supreme Court decided to make the above interim order of the court, the basis of the final decision only for the satisfaction of all the parties concerned and for effecting peace of a permanent nature. This was the "common sense" view of the Judges.

(6) The Kancheepuram cases have decided certain important matters delimiting and defining the rights and obligations between two sects in respect of rituals, Adhypaka service, Manthrams, participation, procession etc. by two sects on the basis of established custom, usage and practice. They have all stood the test of time and they cannot be altered by the court.

The net result of the analysis is that the decisions in the Kancheepuram cases are absolutely valid and relevant even today, and there is absolutely no room for modification or review of those judgements.

CHAPTER - VIII

CONCLUSION

The purpose of this book, as already stated, is to investigate and find out the validity and relevance of some of the earlier temple disputes today, in view of Constitutional provisions relating to religious freedom and the recent Supreme Court decisions. It has been found in the last chapter that the Judicial solutions in respect of the said temple disputes are absolutely valid and relevant even today inspite of the fact that much water has flown under the bridge in the evolution of law relating to temples.

Law can never be static; it is the dynamic evolution of law alone which will meet the needs and aspirations of the ever changing society.

But, however, in respect of temple disputes, "custom" has reigned supreme throughout, and that is why, from the days of the Board of Revenue of The East India Company, till today, the legislature and courts have attached maximum importance and significance to the custom, usage and practice prevailing in the temple in order to solve the disputes.

"Fullest effect is given to custom both by courts and legislature. Under the Hindu system of law, clear proof of usage will out weigh the written text of the law."[1]

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1. PRIVY COUNCIL In Collector of Madura Vs. Mootoo Ramalingam (1868) 12 MIA 397

It is agreed by the legislature and the courts that the customs and usages of the temples are supreme and have to be protected. But, at the same time, enactments are made by the legislators continuously interfering with the customs. The Constitution of India clearly speaks of the powers of the State in this regard which is already discussed. The State Government makes law invalidating Hindu customs or usages affecting the rights of some individuals, sects or groups, in the larger public interest.

In democracy, the Will of the majority prevails.

Similarly, the majority Judges in a Full Bench, consisting of three Judges or more decide important issues. But, sometimes, while interpreting law, even the Judges find it difficult to solve complicated temple disputes. In fact, the Supreme Court has observed:

"*The distinction between matters of religion and those of its secular administration of religious properties may, at times, appear to be a thin one. But, in cases of doubt as Chief Justice Latham pointed out, the court should take a common sense view and be actuated by consideration of practical necessity*".[1]

What is "common sense" and what is consideration of "practical necessity", will depend on not only the facts and circumstances of each case, but also on the wide discretionary powers conferred on the Judges. Therefore, we are governed not only by the Constitutional provisions

1. 1954 (1) MLJ (SC) p. 718 Panchand Gandhi Vs. State of Bombay.

and the State Acts, but also, sometimes by the common sense view of Judges.

Before one goes to court to assert his right or to defend his right in respect of the Temple dispute, he must have elementary knowledge of law, the view and attitude of Supreme Court Judges and knowledge of established custom and usage of the temple. Then only, the prospective litigant would know where he stands and takes a positive decision either to fight the case to the last, or settle the dispute without going to the court by means of arbitration. It is hoped that the discussion in the above chapters is useful for this purpose.

One must remember that according to the provisions of the Constitution, whenever there is conflict between religious practice and need of social reform, religion must yield (Article 25(1)(b).

What is Social reform? This is decided by the majority legislators in the legislative assembly, and since they are the representatives of the people, the will of the majority of the legislature becomes law.

But, however, the will of the majority religion in India, may or may not become law, depending upon the concurrence of the will of the majority of the legislators who have to take into consideration, many other factors like protection of rights of the minorities.

Nobody can or should object to the removal of the evil of untouchability from the society and allowing all people

alike into the temple for worship, since it was Bhagawat Ramanuja who started this reform even thousand years back. But difficulty may crop up only when there is an undesirable interference with the rights of Archakas, Jeers, sects, etc. If Hindus do not want interference of any kind from the state and want to prevent the inroads and interference in the religion and temple administration, they have to raise a single voice against such interference by the state. But,however, the fact is, there are several sects, groups and factions in every temple throughout the country, and all these factions cause frictions among themselves leading to differences and disputes, which, in turn, lead to law and order problem,necessitating the legislative or executive interference to protect the society as a whole and the ordinary worshippers of every temple.

Therefore, another important, if not more significant purpose for this research is to highlight the sectarian disputes in Vaishnava temples and explain the futility of such fights in the law courts.

The bitterness between the two Vaishnavite sects-Thengalai and Vadagalai unfortunately prevails even today to some extent in spite of the fact that the world is shrinking into a global village with unrecognizable transformation in culture and attitude.

The Supreme Court in **In A.S. Narayana Deekshitulu Vs. State of A.P. and others**[1] says:

1. 1996(9) SUPREME COURT CASES 548

"The objective of Vedanta is the happiness and welfare of man; not man as divided into sects, creeds, castes and classes, but man as man wherever he may be found. Based on the unitary and universal view of man upheld in the philosophy, religion in India taught that man, in the course of his development, in the course of self-expression, generates various forces, physical or mental, social or political, and that the development of these forces needs to be matched by a corresponding development of his inner spiritual resources, which alone can provide the factors of stability to an evolving personality or social system".

From the observations of the courts stated above, it can safely be concluded that the Judges in Courts of law expect the two sects Thengalai and Vadagalai to be more broad minded, to be mutually accommodative and carry on the service in temples uninterruptedly and with spirit of give and take policy, whatever may be the justification or legality of the merits of the contentions of the respective sects on particular issues. The concern of the Courts is more for dispensing Justice for the large body of general worshippers and for maintenance of public peace, law and order in all rituals, festivals, Poojas and all other matters connected with temples. If the state's interference in the administration of temples should be kept at the minimum, the rival sects must heed to the advice of the Judges as stated in the above decisions and must learn to get along together.

The Privy Council observed: *"It is important to bear in mind that both derive from and share a common religious origin and faith, and that while each adheres to its own school of thought, neither of them condemns or rejects the sacred character of the other's cult"*[1]

As on date, Srivaishnavites of the two sects, at any rate the overwhelming majority of them, have realised the folly of futile disputes, and have come closer together, even having inter-marital relationships. Many of them are struggling for survival in this competitive world, and they are not impressed by the 'so called' doctrinal differences between the two sects. Infact, there is a loud cry for unity among all sects within the fold of the "Hindus" who, in turn, have to tolerate and respect other religions as well.

In the interest of smooth temple worship and administration, all Srivaishnavites of the country, to whatever school they may belong, must have inter-action among themselves and protect the temples from factional fights.

Both Sri Vedantha Desikar and Sri Manavala Mahamunigal were unquestionably great scholars and have contributed to the growth of Vaishnavism in South India more than anyone else after Sri Ramanuja. Similarly, the Ubhaya Vedanta i.e. Sanskrit and Tamil Vedanta are equally

1. 1947 ILR 436 (PC) His Holiness Peria Kovil Kelvi Appan Thiruvenkata Ramanuja Pedda Jiyyangarlu Varlu Vs. Prathivathi Bhayankaram Venkatacharlu and others.

important and are the two eyes of the religion. It is extremely difficult, nay, impossible to master all the Vaishnavite literature in Sanskrit and Tamil within the life span of one individual. Similarly, extraordinary regard and respect for one Acharya does not or should not mean hatred for the other Acharyas. More than 600 years after those Acharyas lived and enriched Vaishnavism, after the invasion and influence of other religions and cultures, in the present day context, we are all pigmies, compared to those great Poorvacharyas, and we are not even qualified to comment on them or compare them in any manner. It is sufficient to say that, after that one and only great Sri Ramanuja, Sri Vedanta Desikar and Sri Manavala Mahamunigal by their extraordinary lives and works, have shaped the lives of Srivaishnavites, and they, severely caught in the materialistic trap, should atleast abstain from criticizing those Acharyas at any time in any manner and live in the spirit of unity, peace and amity, and work for the welfare of the entire humanity in the great Srivaishnavite tradition.

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